

11

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926

No. 95

THE UNITED STATES OF AMERICA, PLAINTIFF IN
ERROR

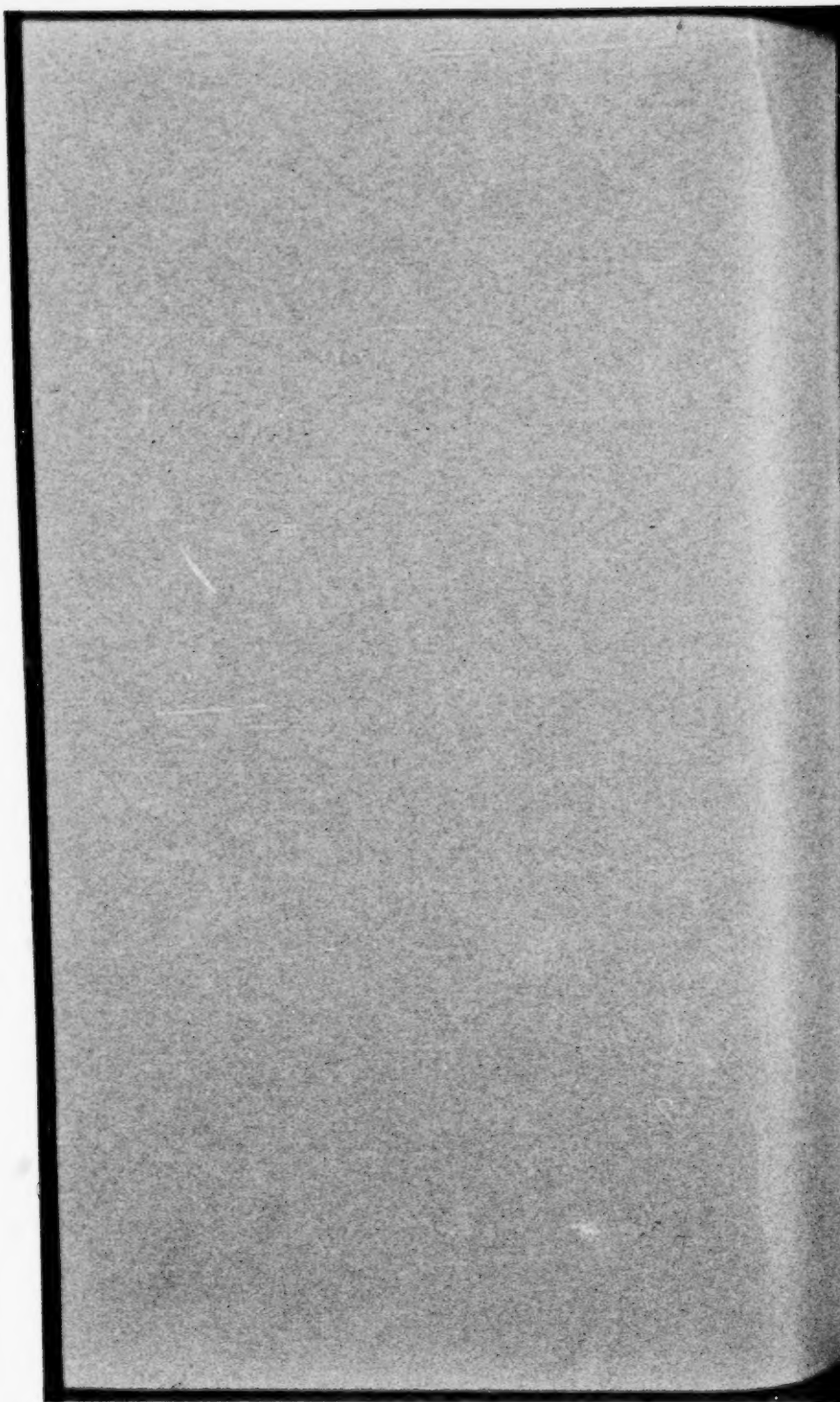
vs.

GEORGE A. STORRS, JOSEPH S. WELCH, ET AL.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF UTAH

FILED MAY 1, 1926

(31,109)



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926

No. 95

THE UNITED STATES OF AMERICA, PLAINTIFF IN
ERROR

vs.

GEORGE A. STORRS, JOSEPH S. WELCH, ET AL.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF UTAH

INDEX

	Original	Print
Record from District Court of the United States, District of Utah	1	1
Caption [omitted in printing]	1	1
Indictment	1	1
Plea of not guilty	41	25
Order allowing withdrawal of pleas of not guilty	44	25
Plea in abatement of defendant George A. Storrs	45	25
Plea in abatement of defendant Joseph S. Welch et al.	48	27
Opinion	52	29
Order granting pleas in abatement	54	30
Judgment	54	31
Petition for rehearing [omitted in printing]	56	31
Order denying petition for rehearing	58	31
Bill of exceptions	58	32
Colloquy between court and counsel	59	32
Testimony of Wayne T. Wilcox	61	34
Charles M. Croft	65	37
Edward M. Garnett	68	39
Exhibit 1. Letter from Harlan F. Stone to E. M. Garnett, October 18, 1924	74	43
Exhibit 1-A. Oath of E. M. Garnett	79	47
Exhibit 2. Letter from E. M. Garnett to the Attorney General, October 21, 1924	80	47
Order settling bill of exceptions	82	49
Petition for writ of error	83	50
Assignments of error	86	51
Order allowing writ of error	87	52
Precept for transcript of record	89	52
Judge's certificate	91	53
Writ of error and return	92	54
Citation and service [omitted in printing]	94	55
Clerk's certificate [omitted in printing]	96	55



[Caption omitted.]

1 In United States District Court, District of Utah

No. 8489, Criminal

UNITED STATES OF AMERICA, PLAINTIFF

VS.

GEORGE A. STORRS, JOSEPH S. WELCH, EARL J. WELCH, AND CHARLES
M. Croft, defendants

Indictment

Filed Oct. 31, 1924

No. 8489, Criminal

United States of America, District of Utah, Central Division

2 *In the name and by the authority of the United States of
America:*

In the District Court of the United States of America, within and for the Central Division of the District of Utah, in the Eighth Judicial Circuit.

The grand jurors of the United States of America, drawn from the territory comprising the Northern and Central Divisions of the District of Utah, and sitting in the Central Division of said district at an adjourned session of the term beginning the fourteenth day of April, A. D. 1924, being first duly impaneled, sworn, and charged by said court to inquire of and concerning the crimes and offenses within and for said District of Utah, upon their oaths do present and charge:

First count

That one George A. Storrs, and one Jos. S. Welch, and one Earl J. Welch, and one Charles M. Croft, hereafter in this indictment called defendants, continuously thruout the period of time from about the fifteenth day of November, 1919, to the fifteenth day of March, 1923, at Salt Lake City, in Salt Lake County, in the State and Central Division of the District of Utah, and within the jurisdiction of this court, knowingly, wilfully, unlawfully, and feloniously, have conspired, combined, confederated, and agreed together, and each with the other, and with divers persons to the grand jurors aforesaid unknown, to commit an offense against the United States of America, to wit, to violate section 215 of the Federal Penal Code of 1910, being an act of Congress approved March 4, 1909 (35 Stat. 1088), that is to say:

That the said defendants then and there and continuously throughout the said period of time from about the said 15th day of November, 1919, to the said 15th day of March, 1923, unlawfully, knowingly, wilfully, corruptly, and feloniously have conspired, combined, confederated, and agreed together, and each with the other, and with divers other persons to the grand jurors aforesaid unknown, in unlawfully, knowingly, wilfully, and feloniously devising and intending to devise a scheme and artifice to defraud all such persons thruout the State of Utah who could or might be induced, by means of the fraudulent and false devises, artifices, representations, pretenses, and promises hereinafter mentioned, to invest various sums of money and other valuable property, as loans to, or as the purchase price of bonds, or of town-site lots, of a corporation to be organized, and which was thereafter organized and known as Great Western Coal Mines Company, either directly or as a result of solicitation on the part of said defendants, or the agents, representatives, and associates of said defendants, and to obtain from said persons who might be induced as aforesaid, by means of said false and fraudulent representations, devises, pretenses, and promises, said sums of money and other valuable property, which said sums of money and other valuable property said defendants would apply, in whole or in part, to their own use and gain; and, for the purpose of executing said scheme and artifice to defraud and in attempting so to do, to place and cause to be placed in the post office of the United States at Salt Lake City aforesaid, to be sent and delivered by the post-office establishment of the United States, certain letters, prospectuses, writings, and advertisements, in violation of said section 215 of the said penal code.

That said scheme and artifice to defraud so to be devised and intended to be devised as aforesaid, and which was in fact devised in pursuance of said unlawful agreement and conspiracy, was in substance and in effect as follows, that is to say:

It was the intent, object, and purpose of the said defendants to organize, or cause to be organized, under the laws of the State of Utah, a certain corporation, which corporation should be formed and organized for the pretended purpose of carrying on coal mining operations in Carbon County, State and District of Utah, for the pretended benefit and profit of the persons to be defrauded, who should and did invest money and other valuable property in said corporation; that said corporation so to be organized was in fact not to be organized in good faith for the carrying on of coal mining operations in Carbon County, State and District of Utah, or in any other place, for the benefit and profit of said persons to be defrauded, who should and did invest sums of money and other valuable property in said corporation, but was to be and was thereafter organized for the personal benefit, profit, and financial gain of the said defendants, and to induce and persuade the said persons to be defrauded to pay and send their money and other valuable property to the defendants, under their own names, and under the name of defendants

as "fiscal agents" and under the name of the Great Western Coal Mines and Great Western Coal Mines Company; and to induce and persuade the said persons to be defrauded to pay and send their money and property as aforesaid, it was the intent and object of said defendants by word of mouth and by means of letters, prospectuses, newspaper articles, maps, and plats, to make, and the defendants did make, either directly or through agents, representatives, and associ-

ates of said defendants, false and fraudulent pretenses, representations and promises to the persons to be defrauded, concerning the purpose, object, organization, stability, financial condition, property holdings, and coal-land holdings of said corporation, and the nature, extent, and value of coal deposits and coal lands which the defendants should and did, at the time such false and fraudulent pretenses, representations, and promises were to be made and were made, claim said corporation to be organized as aforesaid, would and did own and control, and concerning the opportunity offered persons investing money and other valuable property in said corporation to make large financial gains and profits.

That as part of said scheme and artifice the said defendants did, on or about the 21st day of October, 1921, organize and cause to be organized, under the laws of the State of Utah, a certain corporation, to wit, Great Western Coal Mines Company.

That among the false and fraudulent pretenses, representations, and promises so to be made, and so made, by the said defendants, the falsity of which the said defendants, and each of them, at all times well knew, were particularly the following:

1. That the property holdings to be acquired, and which were acquired by the said Great Western Coal Mines Company, from a certain corporation, namely, Cedar Mesa Farm, Inc., included extensive and valuable deposits of coal, and a large acreage of coal lands, containing between 800 and 1,800 acres, in Carbon County, State of Utah, which said deposits and coal lands the said Cedar Mesa Farm, Inc., owned and controlled; whereas, in truth and in fact, the said Cedar Mesa Farm, Inc., did not at any time own or control, or have any valid interest in or title to, any coal deposits

or coal lands, except about nine (9) acres of coal lands, either in Carbon County, State of Utah, elsewhere, and the said

Great Western Coal Mines Company did not acquire from the Cedar Mesa Farm, Inc., or from any other corporation or person, throughout the period of time hereinbefore alleged, any coal deposits or coal lands, or any valid interest in or title thereto, except about nine (9) acres of coal lands.

2. That the money and other valuable property advanced, paid, and sent by persons to invest in said corporation was used and to be used in getting the property to be acquired, and which was acquired by the said Great Western Coal Mines Company, in shape for a first-mortgage bond issue of \$600,000.00, and to construct a railroad to certain coal properties adjoining and including the holdings of the said Cedar Mesa Farm, Inc., and to develop coal properties

claimed by the defendants to have been acquired by or which were then under the control of the said Great Western Coal Mines Company; whereas, in truth and in fact, no part of said money or other valuable property advanced, paid, or sent by persons induced to invest in said corporation was used in the development of any coal property or properties at all, nor to construct the said railroad, except a very small part thereof, nor in getting said property in shape for the issuance of first-mortgage bonds to the amount of \$600,000.00, or any other amount; but, on the contrary, the said money and other valuable property so advanced, paid, and sent as aforesaid was used and kept, either in whole or in large part, by the said defendants and their agents and representatives as commissions and for the payment of their personal debts and obligations.

4. That the bonds issued by said Great Western Coal Mines Company were to be, and in fact were, first-mortgage bonds; 7
whereas, in truth and in fact, said bonds were not first-mortgage bonds, said bonds being only secured by property upon which there were then, and at all times thereafter up to the present time, certain existing and valid prior mortgages, liens, and incumbrances in large amounts.

4. That the said Great Western Coal Mines Company should be shipping coal for the 1922 season; whereas, in truth and in fact, no coal has ever been shipped at all by the said Great Western Coal Mines Company up to the time of the returning of this indictment, and the said defendants never intended that shipment should or could be made of coal by the said Great Western Coal Mines Company for the said 1922 season.

That said defendants and each of them, thruout the period of time hereinbefore alleged, well knew of the falsity and fraudulent and misleading character of said representations, claims, promises, and pretenses, and of the falsity and fraudulent character and purpose of said artifice and scheme and device; and that all and singular of the false and fraudulent statements, representations, pretenses, and promises hereinbefore set forth would be and were intended by said defendants, and each of them, to be made and done, for the fraudulent purpose on the part of the said defendants and each of them, to deceive the said persons so to be defrauded, and fraudulently to induce said persons and each of them to advance, pay, and send sums of money and other valuable property to said defendants, their agents and representatives, or to said Cedar Mesa Farm, Inc., or said Great Western Coal Mines Company, as loans to said Great Western Coal Mines Company, or as the purchase price 8
for pretended first-mortgage bonds, or town-site lots of said Great Western Coal Mines Company, and to cheat and defraud said persons so to be defrauded as aforesaid, with the intent then and there on the part of said defendants and each of them to convert said sums of money and other valuable property so fraudulently obtained as aforesaid, either in whole or in part, to the

use, gain, and benefit of the said defendants and each of them, and of said other persons to the grand jurors aforesaid unknown, with whom said defendants conspired as aforesaid.

That said conspiracy of said defendants was continuous in nature and in purpose and was continuously in existence and in process of execution by said defendants thruout all of the period of time hereinbefore alleged.

That on or about the 22nd day of March, 1921, according to and in pursuance of said unlawful conspiracy, combination, confederation, and agreement aforesaid, and during the existence of said unlawful conspiracy, and to effect the object of the same, and for the purpose of executing and bringing about the accomplishment and completion of said scheme and artifice to defraud and attempting so to do, the said Earl J. Welch, at Salt Lake City aforesaid, did knowingly, wilfully, unlawfully, and feloniously place and cause to be placed in the post office of the United States at Salt Lake City, in the State and central division of the district of Utah aforesaid, to be sent and delivered by the post office establishment of the United States a certain letter enclosed in an envelope, postage prepaid, and addressed to Mr. Geo. Rasmusson, Provo, Utah, R. D. No. 2, Box 211, and which said letter was then and there of the tenor following, to wit:

9 Great Western Coal Mines, General offices 208 Newhouse Building, Telephone Wasatch 2610, Mines, Carbon County, Utah. Fiscal agents: Earl J. Welch, Jos. S. Welch, C. M. Croft

SALT LAKE CITY, UTAH, *March 22, 1921.*

MR. GEO. RASMUSSEN,

Provo, Utah, R. D. No. 2, Box 211.

DEAR SIR: On the date of December 14th, 1920, you subscribed to the Great Western Coal Mines loan, in the sum of \$500,000, at which time you received from our authorized representatives a receipt for the amount of your loan.

We are enclosing you herewith the companys' certificate of guarantee, which is an additional safeguard to your interest.

Since your subscription was taken this company has fortified the soundness of your loan to the extent that we have arranged a bond or guarantee for your protection, and this is to be held by you until the organization of our company, at which time you will receive a regular stock certificate.

You will be interested to know we have heard that on the property of the National Fuel Company, which adjoins that of the Great Western on the north, there has been an additional sum of \$50,000,00 invested, and it is understood that up to date there has been \$200,000,00 put into this company.

The Great Western Coal Mines own and control what we firmly believe to be one of the greatest deposits of undeveloped coal lands

in the entire West. We are located in the heart of the Carbon County district, directly in the center of production.

10 As our representative told you at the time you gave him your order, that we were raising an initial sum of \$75,000.00 and the offer that we made you and are still making was three shares for every dollar invested for the use of your money, together with a guarantee that your investment will be returned to you upon the completion of the financing of our company.

We thank you for the confidence you have placed in our organization to the extent that your loan, and for that reason we extend an opportunity to you so that you may increase your loan to any amount that you so desire.

Owing to the fact that you were one of the first to join hands with us, we feel duty bound to grant the privilege of an additional loan to you.

The merits of our liberal offer, together with the soundness of this security, are causing the unsold portion of \$75,000.00 to be rapidly absorbed by the most conservative investor. Therefore, if you desire to take advantage of our extended opportunity to you, it is necessary that you send us your check and subscription at once.

By your subscription to this loan you are not only fortifying your financial future by making a rock-ribbed investment, but you are also making it possible for this concern to get into the field of the actual producers in less time than it would otherwise take.

The president of the company, Mr. George A. Storrs, wrote a letter to one of his personal friends and made the following statements: That he had \$127,000.00 invested in this property and
11 further that he would rather lose all of it than to have any misrepresentation made in order to raise the necessary amount required to complete the financing of this organization. If it was good enough for Mr. Storrs to put his fortune into, that in itself is a sufficient reason why you or anyone else who have a few hundred dollars lying idle should put it into this loan.

Put your surplus savings to work with us, as we guarantee the safety of your investment, together with three shares of our stock as a bonus.

Again thanking you for the confidence you have placed in us, and trusting that we may have the pleasure of knowing you personally in the very near future, we are

Most sincerely yours,

GREAT WESTERN COAL MINES CO.,
E. R. WELCH.

EJW MU

P. S. If there is anything about your investment that you do not thoroughly understand, a telephone call to Was. 2610, or a post-card, will immediately bring an explanation.

They, the said defendants, then and there well knowing the said letter to be of and concerning said scheme and artifice to defraud, and for the purpose of executing the same and attempting to execute

the same and to effect the object and purpose of said unlawful conspiracy aforesaid.

That thereafter, to wit, on or about the 19th day of April, 1921, according to and in pursuance of said unlawful conspiracy, combination, confederation, and agreement aforesaid, and during the
12 existence of said unlawful conspiracy, and to effect the object of the same, and for the purpose of executing and bringing about the accomplishment and completion of the aforesaid scheme and artifice to defraud and attempting so to do, the said Earl J. Welch, at Salt Lake City, aforesaid, did knowingly, wilfully, unlawfully, and feloniously place and cause to be placed in the post office of the United States at Salt Lake City, in the State and central division of the district of Utah aforesaid, to be sent and delivered by the Post Office Establishment of the United States a certain letter and prospectus, enclosed in an envelope, postage prepaid, and addressed to Mr. A. L. Welliver, c/o. Dempsey Hotel, Davenport, Iowa (said prospectus being too voluminous to be set forth herein), and which said letter was then and there of the tenor following, to wit:

Great Western Coal Mines. General offices, 208 Newhouse Building. Telephone Wasatch 2616. Mines, Carbon County, Utah. Fiscal agents: Earl J. Welch, Jos. S. Welch, C. M. Croft.

SALT LAKE CITY, UTAH. *April 19, 1921.*

MR. A. L. WELLIVER,

c/o. Dempsey Hotel, Davenport, Iowa.

DEAR SIR: Under separate cover I am mailing some prospectuses, letters of reference on Mr. George A. Storrs, and a general statement regarding the proposition of the Great Western Coal Mines.

Your wife called this office and stated that probably you will be in a position to raise some money in that part of the country.
13 We will be pleased to have you do this, and there is no question in my mind but that you will be doing your friends a favor by letting them in on this kind of a deal.

Money is loosening up a little here, and it will only be a short time until we have the \$75,000.00 subscription.

I believe this is the best proposition we will ever have to offer during the development of the Great Western Coal Mines, and very seldom is a deal of this kind ever offered to the public. People coming in at the present time get in even on a better basis than the basis on which Mr. George A. Storrs and partners came in on. They spent their hard earning cash and a lifetime earnings in this property, and they receive no dividend until the development of this property and its success attained.

Those coming in at the present time have their money returned from the first sale of bonds, which simply means that they are going to be out the principle for a few months time; their stock will then

have cost them the interest on their investment during the time it takes us to finish this \$75,000.00 subscription and the sale of that many dollars' worth of bonds.

You have gone in this deal thoroughly and should understand it, and I believe you are in a position to properly explain it to your friends. We wish you much success on your trip and hope that you will be able to do some business for us.

We will take care of you on your commission the day your business is turned in. By the time you return we are apt to be working on the development of the mine itself.

Two of our salesmen just returned from Price, and they tell me that preparations are being made for the building of this rail-
14 road, and there is no question in my mind but that it will be completed this fall, and carrying coal from both the Great Western Coal Mines and the National Fuel; in fact, this statement can be substantiated by one of the county commissioners at Price.

This should help to make you feel better in the investment you made.

Hoping that you will be able to do some business for us and thanking you for the assistance given thus far. We are

Very respectfully yours,

EJW MU

GREAT WESTERN COAL MINES,
E. J. WELCH.

P. S. We will pay you 15 per cent commission on all business that you do.

They, the said defendants, well knowing that the said letter and prospectus to be of and concerning said scheme and artifice to defraud, and for the purpose of executing the same and attempting so to do, and to effect the object of the said unlawful conspiracy aforesaid.

That thereafter, to wit, on or about the 27th day of April, 1921, according to and in pursuance of said unlawful conspiracy, combination, confederation, and agreement aforesaid, and during the existence of said unlawful conspiracy, and to effect the object of the same, and for the purpose of executing and bringing about the accomplishment and completion of the aforesaid scheme and artifice to defraud and attempting so to do, the said Earl J. Welch, at Salt Lake City, aforesaid, did knowingly, wilfully, unlawfully,

and feloniously place and cause to be placed in the post office
15 of the United States at Salt Lake City, in the State and

Central Division of the District of Utah, aforesaid, to be sent and delivered by the post office establishment of the United States a certain letter, enclosed in an envelope, postage prepaid, and addressed to Mrs. D. M. Gray, % County Infirmary, Provo, Utah, and which said letter was then and there of the tenor following, to wit:

Great Western Coal Mines. General offices, 208 Newhouse Building.
Telephone Wasatch 2610. Mines, Carbon County, Utah. Fiscal
agents: Earl J. Welch, Jos. S. Welch, C. M. Croft

SALT LAKE CITY, UTAH, *April 27, 1921.*

Mrs. D. M. GRAY,

c/o County Infirmary, Provo, Utah.

DEAR MADAM: I am enclosing your certificate of guarantee, which acts as an additional safeguard to the investment you recently made in this company. We believe that we have one of the best coal properties in the United States, which is located in the heart of the best bituminous coal districts in the world.

The market for Utah coals on the coast is gradually increasing, and there is no question in my mind but what the coal business of Utah is now in its infancy and on the verge of its greatest development.

The Government is arranging for a fleet to be placed on the Pacific coast. California at the present time is producing considerable less oil than is consumed in that State. Oil is the necessary fuel for Government ships, and as soon as this fleet reaches the coast California will have to make other arrangements for fuel purposes.

Our coal beds are the nearest to the coast of any in the United States, which means that in a short time we will be shipping large quantities of coal west. The moneyed interests of this State, as well as other States, are fast becoming interested in the coal business. Coal is one of the main essentials of any nation, and according to a report published in Sunday's "Telegram" we have enough coal to last this company for fifty-seven thousand years and only oil enough to last nine and a quarter years; this means that we are going to see some big developments in the coal business in this part of the country in the next few years.

The United States leads the world in the exporting of coal at the present time, and the demand for coal in this country is increasing every day. This simply means that we will always have a good, strong market for coal produced in Carbon County, and I consider an investment in this company one of the safest possible to make.

Hoping that you will give us all the assistance possible in making this company the success it should be, we are,

Yours very respectfully,

GREAT WESTERN COAL MINES.
E. J. WELCH.

EJW MU

They, the said defendants, well knowing the said letter to be of and concerning said scheme and artifice to defraud, and for the purpose of executing the same and attempting so to do, and to effect the object of the said unlawful conspiracy aforesaid.

That thereafter, to wit, on or about the sixth day of May, 1921, according to and in pursuance of said unlawful

conspiracy, combination, confederation, and agreement aforesaid, and during the existence of said unlawful conspiracy, and to effect the object of the same, and for the purpose of executing and bringing about the accomplishment and completion of the aforesaid scheme and artifice to defraud, and attempting so to do, the said Joseph S. Welch, at Salt Lake City, aforesaid, did knowingly, wilfully, unlawfully, and feloniously, place and cause to be placed in the post office of the United States at Salt Lake City, in the State and Central Division of the District of Utah aforesaid, to be sent and delivered by the post-office establishment of the United States, a certain letter, enclosed in an envelope, postage prepaid, and addressed to Mrs. D. M. Gray, % County Infirmary, Provo, Utah, and which said letter was then and there of the tenor following, to wit:

Great Western Coal Mines. General offices, 208 Newhouse Building.
Telephone, Wasatch 2610. Mines, Carbon County, Utah. Fiscal
agents: Earl J. Welch, Jos. S. Welch, C. M. Croft.

SALT LAKE CITY, UTAH, *May 6, 1921.*

Mrs. D. M. GRAY,

% County Infirmary, Provo, Utah.

DEAR MADAM: On April 13th, you subscribed for \$1,000.00 interest in the Great Western Coal Mines. There is \$50.00 due on your subscription May 1st, which completes the \$1,000.00 payment.

18 Hoping that you will mail this in to us at once and thanking you for your subscription, we are,
Very respectfully yours,

GREAT WESTERN COAL MINES,
JOS. S. WELCH.

EJW: MU

They, the said defendants, well knowing the said letter to be of and concerning said scheme and artifice to defraud, and for the purpose of executing the same and attempting so to do, and to effect the object of the said unlawful conspiracy aforesaid.

That thereafter, to wit, on or about the 29th day of June, 1921, according to and in pursuance of said unlawful conspiracy, combination, confederation, and agreement aforesaid, and during the existence of said unlawful conspiracy, and to effect the object of the same, and for the purpose of executing and bringing about the accomplishment and completion of the aforesaid scheme and artifice to defraud, and attempting so to do, the said Earl J. Welch, at Salt Lake City aforesaid, did knowingly, wilfully, unlawfully, and feloniously place and cause to be placed in the post office of the United States at Salt Lake City, in the State and Central Division of the District of Utah aforesaid, to be sent and delivered by the post office establishment of the United States, a certain letter, enclosed in an envelope, postage prepaid, and addressed to Mrs. D. M. Gray, % County Infirmary, Provo, Utah, and which said letter was then and there of the tenor following, to-wit:

Great Western Coal Mines. General offices, 208 Newhouse Building.
Telephone, Wasatch 2610. Mines, Carbon County, Utah.
19 Fiscal agents: Earl J. Welch, Jos. S. Welch, C. M. Croft

SALT LAKE CITY, UTAH, *June 29, 1921.*

Mrs. D. M. GRAY,

c/o County Infirmary, Provo, Utah.

DEAR MRS. GRAY: Mr. STORRS just came back from Helper and has been down over the coal property. He states that the ranch is in very fine condition and that we are going to have a good crop. The coal seams have been faced off, and we are doing all that we possibly can for the progress and development of the Great Western Coal Mines, and the assistance of everyone interested will be a big help to us in making this company the success it should be.

Mr. Storrs will return to Price this week, and while on this trip he will put an engineer to work laying out the town for the Great Western Coal Mines.

Instead of having a number of small towns up Gordon Creek for each coal camp, we are going to have one large town at the mouth of the canyon, which will accommodate all the employees of the different companies that develop coal properties in this section of the country. It is our intention to have each miner own his own home and a small acreage which will enable him to raise a garden and farm products during his spare time. We want to have one of the most up-to-date camps in the State, and we believe that this plan will enable us to have the most up-to-date churches, schools, stores, and amusement halls, and we will be able to make an attractive place for residence.

20 The ex-State mine inspector tells us that we have some of the best undeveloped coal land he ever saw. Coal hasn't taken much of a drop, and for this reason the dealers have not stored coal this year. This simply means that this fall and winter the mines will be running to capacity in order to supply the consumer with the necessary coal, and the probabilities are that we will see a coal famine this year.

The United States is exporting more than twice the amount of coal of any nation in the world to-day. We are exporting lots of coal to the Pacific coast, and inasmuch as our coal mines are farthest west of any in the United States this belongs to us.

The coal business to-day is in its infancy. According to a report given by some of the leading geologists of this country, we have oil enough to last for nine and a quarter years and coal enough to last for more than fifty-seven thousand years. This country is exporting more coal than any nation in the world, and our coal fields are in what you might call the development stages.

Big interests from all over the country are fast becoming interested in our coal lands, and if we care to participate in the wealth which is now in its raw stages in Utah, we will have to get busy and grasp these opportunities as they are presented to us.

No square a man ever lived than Mr. George A. Storrs. He along with others interested in this company have had considerable experience in the coal business. Mr. Croft, one of the large stockholders here, opened the Black Hawk, which is today the largest single producer in the world. He also opened the Peerless, which has done exceptionally well in the last two and a half years of its development period.

21 The assets of this company, along with the experience these men have had in the development of coal properties, all go to assure us of a very successful camp up Gordon Creek. And your assistance in every way possible will help to assure us of a successful outcome.

This \$1,000.00 is one among many thousands that have been put into this company for the preparation of the property for a bond issue, when your money is returned along with three shares of stock for every dollar that you let us have. You haven't a thing to worry about, and we are as anxious as you to have this money returned, and as soon as we get on the bond issue, we will return your thousand dollars. It is impossible for us to give a definite date as to when you can expect your money, but we can assure you of the fact that you have made an exceptional investment and that your money will be returned; and some day the stock you hold in the Great Western Coal Mines will be worth a lot of money. At that time you will appreciate the investment you have made with us and perhaps wish that you had increased the amount instead of doing as you are at the present time, worrying about the small amount you have with us.

Sometime in the immediate future we would appreciate having you call at the office and will be able to go over the maps with us and show you our holdings, which I believe will set your mind at rest so far as the investment is concerned; and we will do our best to see that your money is returned among the first so that you will have it to take care of your building plan.

22 Again thanking you for the assistance given thus far and hope that you will continue to assist us in the development of what we consider the best property in the State.

Very respectfully yours,

EJW MU

GREAT WESTERN COAL MINES,
E. J. WELCH.

They, the said defendants, well knowing the said letter to be of and concerning said scheme and artifice to defraud, and for the purpose of executing the same and attempting so to do, and to effect the object of the said unlawful conspiracy aforesaid.

That thereafter, to wit, on or about the third day of August, 1921, according to and in pursuance of said unlawful conspiracy, combination, confederation, and agreement aforesaid, and during the existence of said unlawful conspiracy, and to effect the object of the same, and for the purpose of executing and bringing about the accomplishment and completion of the aforesaid scheme and artifice to defraud

and attempting so to do, the said Earl J. Welch, at Salt Lake City, aforesaid, did knowingly, wilfully, unlawfully, and feloniously, place and cause to be placed in the post office of the United States at Salt Lake City, in the State and central division of the district of Utah aforesaid, to be sent and delivered by the post-office establishment of the United States a certain letter, enclosed in an envelope, postage prepaid, and addressed to Mr. Lewis Herrick, 859 E. 9th So., City, and which said letter was then and there of the tenor following, to wit:

Great Western Coal Mines. General offices, 208 Newhouse Building. Telephone, Wasatch 2610. Mines, Carbon County, Utah. Fiscal agents: Earl J. Welch, Jos. S. Welch, C. M. Croft

23 SALT LAKE CITY, UTAH, *August 21, 1921.*

MR. LEWIS HERRICK,
859 E. 9th So., City.

DEAR SIR: We still have a few thousand dollars to raise before we get on the bond issue, at which time we will return to the present subscribers their money and give for the use of this money three shares of stock for every dollar that has been loaned us. Your assistance in raising the balance of the money necessary to enable us to bond this property will help us to hasten the return of your money. A safer and better proposition than the one we are offering has never been put on the market in this State.

Mr. Storrs has just returned from Gordon Creek, and he states that the people of Carbon County are very much enthused over the developments of the Great Western Coal Mines. The town site has been surveyed and we have approximately two thousand lots that we will put on the market in the very near future. If these lots bring \$100.00 apiece that will earn for the company \$200,000.00.

Each day conditions are brighter for the Great Western Coal Mines. You probably noticed by last Sunday's "Tribune" that Mr. Hoover advises the public in general to get busy and fill their coal bins, and that the price of coal will not drop. We will see a coal shortage this winter, and it is going to be the opportune time for us to put out coal on the market. The coal business in this State is in its infancy, and those who realize this fact are going to profit by their investments in the Great Western Coal Mines.

24 In order to raise the balance of the money necessary to prepare this property for bond issue quickly so that we might bond this property and get the coal on the market as soon as possible, we are asking that each subscriber turn in the names of those in his community who he thinks have money that could be invested in a proposition of this kind, and for every name that is turned in and sold from this office we will give \$5.00 in cash. We ought to sell from this office from three to five out of every ten names mailed to us, and it takes you but a few minutes to think of these names and

inclose them in a self-addressed envelope. In order that you might get these names out without trouble and delay, we are inclosing a blank form which is to be used for this purpose.

We hope that you will mail these names to us just as quickly as possible, and every name that we sell we will return check for \$5.00.

Thanking you for the assistance given to the Great Western Coal Mines up to date, we are,

Very respectfully yours,

GREAT WESTERN COAL MINES,
E. J. WELCH.

EJW MU

They, the said defendants, well knowing the said letter to be of and concerning said scheme and artifice to defraud, and for the purpose of executing the same and attempting so to do, and to effect the object of the said unlawful conspiracy aforesaid.

That thereafter, to wit, on or about the 15th day of September, 1921, according to and in pursuance of said unlawful conspiracy, combination, confederation, and agreement aforesaid, and
25 during the existence of said unlawful conspiracy, and to effect the object of the same, and for the purpose of executing and bringing about the accomplishment and completion of the aforesaid scheme and artifice to defraud and attempting so to do, the said Earl J. Welch, at Salt Lake City, aforesaid, did knowingly, wilfully, unlawfully, and feloniously place and cause to be placed in the post office of the United States at Salt Lake City, in the State and Central Division of the District of Utah aforesaid, to be sent and delivered by the post office establishment of the United States, a certain letter, enclosed in an envelope, postage prepaid, and addressed to Mr. Andy Kopasick, Castle Gate, Utah, and which said letter was then and there of the tenor following, to wit:

Great Western Coal Mines. General Offices, 208 Newhouse Building. Telephone, Wasatch 2610. Mines, Carbon County, Utah. Fiscal agents: Earl J. Welch, Jos. S. Welch, C. M. Croft

SALT LAKE CITY, UTAH, *September 15, 1921.*

MR. ANDY KOPASICK,

Castle Gate, Utah.

DEAR SIR: Mr. J. Prezel is interested in the Great Western Coal Mines and gave us your name with a request to make an explanation of what we are offering, with the thought in mind that you possibly would be interested in a deal of this kind.

I am enclosing one or two letters of reference regarding Mr. Geo. A. Storrs. He has had considerable experience in the developing of coal properties and the building of railroads in the intermountain country.

26 He opened the Spring Canyon Coal Mines and spent better than \$600,000.00 there and operated this property for six years, during which time he made of it one of the best coal properties in this country.

Mr. C. M. Croft, one of the largest owners in the Great Western Coal Mines, has had considerable experience in the coal business, having opened up the Black Hawk, which is to-day the largest single producer in the world, and he also opened the Peerless, which has been a very good mine.

Messrs. Storrs, Croft, and others know the possibilities of the coal business. They became interested in the Great Western Coal Mines to the extent of their lifetime earnings.

I am enclosing two letters written by Mr. Geo. A. Storrs, which gives somewhat of an idea of how we are handling this business. He has invested in the Great Western Coal Mines \$127,000.00.

The ranch which adjoins the coal lands is listed with Dun and Bradstreet at \$375,000.00, and the 1,800 acres of coal land has three seams of coal varying from ten to fifteen feet in thickness, and according to geological survey we have better than 110,000,000 tons of coal there. We are raising a certain amount of money which is to be used for the financing of a \$300,000.00 bond issue, and giving as security for the money that is invested with us at the present time three shares of stock for every dollar a man invests, with a par value of \$1.00 per share.

The money invested with us will be returned as soon as the bonds have been sold, and this will leave a man three shares of stock, which represents the interest on the amount of money he lets us have at the present time.

We fully realize that it is impossible for us to make clear in detail our proposition, but if the proposition is as represented it warrants a man investing his money with us. It is impossible for a man to subscribe to this issue after October first.

On receipt of your check we will mail you a certificate of guarantee, which is very much in the form of a note, which you hold against the company until your money is returned and you have received three shares of stock for every dollar you put in. This money should be returned in less than six months' time.

If you do not feel so disposed to invest your money with us without further explanation, kindly notify us by telephone or letter and we will have our representative call and explain a proposition we consider most meritorious from any point of view.

Hoping you will join us in making the Great Western Coal Mines the largest and best camp in the State, we are,

Very respectfully yours,

GREAT WESTERN COAL MINES.
E. J. WELCH.

EJW: MU

We have a town site at the mouth of Gordon Creek Canyon which is surrounded by coal property and ranch land which consists of 2,537 lots varying in price from \$75.00 to \$300.00 per lot, better than \$0.000.00 of these lots have been sold, and we are selling about twenty *lost* a day at the present time. These lots will net us better than \$200,000.00.

28 They, the said defendants, well knowing the said letter to be of and concerning said scheme and artifice to defraud, and for the purpose of executing the same and attempting so to do, and to effect the object of the said unlawful conspiracy aforesaid.

That thereafter, to wit, on or about the eighth day of November, 1921, according to and in pursuance of said unlawful conspiracy, combination, confederation, and agreement aforesaid, and during the existence of said unlawful conspiracy, and to effect the object of the same, and for the purpose of executing and bringing about the accomplishment and completion of the aforesaid scheme and artifice to defraud and attempting so to do, the said defendants, at Salt Lake City, aforesaid, did knowingly, wilfully, unlawfully, and feloniously place and cause to be *placed* in the post office of the United States at Salt Lake City, in the State and Central Division of the District of Utah, aforesaid, to be sent and delivered by the post-office establishment of the United States, a certain letter, enclosed in an envelope, postage prepaid, and addressed to Mr. John Zeno, Midvale, Utah, and which said letter was then and there of the tenor following, to wit:

Great Western Coal Mines. General offices 902 Clift Building.
Telephone Wasatch 2610. Mines, Carbon County, Utah. Branch
office. Fiscal agents: Earl J. Welch, Jos. W. Welch, C. M. Croft,
Geo. A. Storrs

SALT LAKE CITY, UTAH, *November 8, 1921.*

MR. JOHN ZENO.

29 DEAR SIR: The Great Western Coal Mines Company has been duly organized and a bond issue of \$300,000.00, 8 per cent first-mortgage gold bonds is to be offered to the public.

These bonds are \$100.00, \$150.00, \$500.00, and \$1,000.00 denomination and bear interest at the rate of eight per cent per annum, from November 1, 1921. Interest is payable semiannually. They are secured by all the coal lands and farming lands formerly held by the Cedar Mesa Farm, which have been turned over to the Great Western Coal Mines Company. The bonds are redeemable November 1, 1931.

A good many of our holders of certificates of guarantee have requested us to convert the cash-surrender value of their certificates into bonds, which we believe is a very good move for them to make. To all those who desire to do this the company will give as a bonus one share of stock for every dollar in bonds taken this way. This will then give you the three shares for every dollar loaned on the certificate of guarantee, together with one more share for every dollar in bonds where certificate of guarantee is surrendered. In other words, you will receive four shares of the capital stock where bonds are purchased with your certificate of guarantee.

We have enclosed a self-addressed envelope which you may use for mailing in your certificate of guarantee. Just sign this letter at the

bottom and mail certificate to us. We will then mail you your stock certificate, together with bonds to the amount of your certificate of guarantee.

We believe Great Western will be one of the best camps in the State. Our railroad is already under construction, and we should be shipping coal for the 1922 season.

Yours for success,

GREAT WESTERN COAL MINES COMPANY.

Please find inclosed certificate of guarantee No. _____ for \$ _____. Please issue me bonds for cash surrender value of the certificate and mail four shares of the capital stock together with the bonds to me.

They, the said defendants, well knowing the said letter to be of and concerning said scheme and artifice to defraud, and for the purpose of executing the same and attempting so to do, and to effect the object of the said unlawful conspiracy aforesaid.

That thereafter, to wit, on or about the 23rd day of November, 1921, according to and in pursuance of said unlawful conspiracy, combination, confederation, and agreement aforesaid, and during the existence of said unlawful conspiracy, and to effect the object of the same, and for the purpose of executing and bringing about the accomplishment and completion of the aforesaid scheme and artifice to defraud and attempting so to do, the said defendants at Salt Lake City, aforesaid, did knowingly, wilfully, unlawfully, and feloniously, place and cause to be placed in the post office of the United States, at Salt Lake City, in the State and Centreal Division of the District of Utah, as aforesaid, to be sent and delivered by the post office establishment of the United States, a certain letter, enclosed in an envelope, postage prepaid, and addressed to Mr. P. L. Ward, Springville, Utah, and which said letter was then and there of the tenor following, to wit:

31 Great Western Coal Mines. General offices, 902 Clift Building. Telephone, Wasatch 2610. Mines, Carbon County, Utah. Branch office, Helper, Utah. Fiscal agents: Earl J. Welch, Jos. S. Welch, C. M. Croft, Geo. A. Storrs

SALT LAKE CITY, UTAH, *November 23, 1921.*

Mr. P. L. WARD,

Springville, Utah.

DEAR SIR: We acknowledge receipt of your letter of November 23, together with check for \$58.00 which pays your subscription for \$333.00 in full, and thank you very much for your bond subscription for this amount.

We are enclosing certificate for 1,000 shares of stock which is the stock due on your subscription for \$333.00.

The bonds are in denominations of \$100.00, \$150.00, \$500.00, and \$1,000.00; we can not issue \$333.00 worth of bonds. If you will

send us your check for \$17.00 we will send you \$350.00 in bonds, together with 350 shares of stock. If you cannot mail your check right away, the company will allow you a little time to make this additional payment.

Please let us know if it will be O. K. to enter your subscription for \$350.00 in bonds and oblige,

Yours very truly,

GREAT WESTERN COAL MINES COMPANY,
J. L. WELCH.

JLW:MU.

They, the said defendants, well knowing the said letter to be of and concerning said scheme and artifice to defraud, and for the
32 purpose of executing the same and attempting so to do, and to effect the object of the said unlawful conspiracy aforesaid.

And so the grand jurors aforesaid, upon their oaths as aforesaid, do say: That said defendants, during the period of time, at the place, and in the manner and form aforesaid, unlawfully, wilfully, and feloniously have conspired to commit an offense against the United States of America, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

And the grand jurors of the United States of America aforesaid, upon their oaths as aforesaid, do further find and present:

Second count

That one George A. Storrs, and one Jos. S. Welch, and one Earl J. Welch, and one Charles M. Croft, hereafter called defendants, prior to the 25th day of November, 1921, at Salt Lake City, Salt Lake County, State and Central Division of the District of Utah, and within the jurisdiction of this court, did knowingly, wilfully, unlawfully, fraudulently, and feloniously devise a scheme and artifice to defraud all such persons thruout the State of Utah who could, or might, be induced by means of the fraudulent and false devices, artifices, representations, pretenses, and promises hereinafter mentioned, to invest sums of money and other valuable property as loans to or as the purchase price of pretended first mortgage bonds, or of townsite lots of a corporation to be organized, and which was thereafter organized and known as Great Western Coal Mines Company,
33 either directly or as a result of solicitation on the part of said defendant, or the agents, representatives, and associates of said defendants, and to obtain from said persons who might be induced as aforesaid by means of said false and fraudulent representations, devices, pretenses, and promises said sums of money and other valuable property, which said sums of money and other valuable property said defendants would apply, in whole or in part, to their own use and gain; and, for the purpose of executing said scheme and artifice to defraud and in attempting so to do, to place

or cause to be placed in the post office of the United States at Salt Lake City, aforesaid, to be sent and delivered by the post office establishment of the United States certain letters, prospectuses, writings, and advertisements, in violations of section 215 of the Federal Penal Code.

The said scheme and artifice to defraud so to be devised and intended to be devised as aforesaid, and which was in fact devised, was in substance and effect as follows, that is to say:

It was the intent, object, and purpose of the said defendants to organize, or cause to be organized, under the laws of the State of Utah, a certain corporation, which corporation should be formed and organized for the pretended purpose of carrying on coal mining operations in Carbon County, State and District of Utah, for the pretended benefit and profit of the persons to be defrauded, who should and did invest money and other valuable property in said corporation; that said corporation so to be organized was in fact not to be organized in good faith for the carrying on of coal-mining operations in Carbon County, State and District of Utah, or

34 in any other place, for the benefit and profit of said persons to be defrauded, who should and did invest sums of money and other valuable property in said corporation, but was to be and was thereafter organized for the personal benefit, profit, and financial gain of the said defendants, and to induce and persuade the said persons to be defrauded to pay and send their money and other valuable property to the defendants under their own names, and under the name of defendants as "fiscal agents" and under the name of the Great Western Coal Mines and Great Western Coal Mines Company; and to induce and persuade the said persons to be defrauded to pay and send their money and property as aforesaid, it was the intent and object of said defendants by word of mouth and by means of letters, prospectuses, newspaper articles, maps, and plats, to make, and the defendants did make, either directly or through agents, representatives, and associates of said defendants, false and fraudulent pretenses, representations, and promises to the persons to be defrauded, concerning the purpose, object, organization, stability, financial condition, property holdings, and coal-land holdings of said corporation, and the nature, extent, and value of coal deposits and coal lands which the defendants should and did, at the time such false and fraudulent pretenses, representations, and promises were to be made and were made, claim said corporation to be organized as aforesaid, would and did own and control, and concerning the opportunity offered persons investing money and other valuable property in said corporation to make large financial gains and profits.

That as part of said scheme and artifice the said defendants did on or about the 21st day of October, 1921, organize and cause to be organized, under the laws of the State of Utah, a certain corporation, to wit, Great Western Coal Mines Company.

35 That among the false and fraudulent pretenses, representations, and promises so to be made, and so made, by the said defendants, the falsity of which the said defendants, and each of them, at all times well knew, were particularly the following:

1. That the property holdings to be acquired, and which were acquired by the said Great Western Coal Mines Company from a certain corporation, namely, Cedar Mesa Farm, Inc., included extensive and valuable deposits of coal, and a large acreage of coal lands, containing between 800 and 1,800 acres, in Carbon County, State of Utah, which said deposits and coal lands the said Cedar Mesa Farm, Inc., owned and controlled; whereas, in truth and in fact, the said Cedar Mesa Farm, Inc., did not at any time own or control, or have any valid interest in or title to, any coal deposits or coal lands except about nine (9) acres of coal lands, either in Carbon County, State of Utah, or elsewhere; and the said Great Western Coal Mines Company did not acquire from the Cedar Mesa Farm, Inc., or from any other corporation or person, throughout the period of time hereinbefore alleged, any coal deposits or coal lands, or any valid interest in or title thereto except about nine (9) acres of coal lands.

2. That the money and other property advanced, paid, and sent by persons to invest in said corporation was used and to be used in getting the property to be acquired, and which was acquired by the said Great Western Coal Mines Company, in shape for a first-mortgage bond issue of \$600,000.00, and to construct a railroad to certain coal properties adjoining and including the holdings of the said Cedar Mesa Farm, Inc., and to develop coal properties claimed

36 by the defendants to have been acquired by or which were then under the control of the said Great Western Coal Mines Company; whereas, in truth and in fact, no part of said money or other valuable property advanced, paid, or sent by persons induced to invest in said corporation was used in the development of any coal property or properties at all, nor to construct the said railroad, except a very small part thereof, nor in getting said property in shape for the issuance of first-mortgage bonds to the amount of \$600,000.00, or any other amount; but, on the contrary, the said money and other valuable property so advanced, paid, and sent, as aforesaid, was used and kept, either in whole or in large part, by the said defendants and their agents and representatives as commissions and for the payment of their personal debts and obligations.

3. That the bonds issued by said Great Western Coal Mines Company were to be, and in fact were, first-mortgage bonds; whereas, in truth and in fact, said bonds were not first-mortgage bonds, said bonds being only secured by property upon which there were then, and at all times thereafter up to the present time, certain existing and valid prior mortgages, liens, and incumbrances in large amounts.

4. That the said Great Western Coal Mines Company should be shipping coal for the 1922 season; whereas, in truth and in fact, no

coal has ever been shipped at all by the said Great Western Coal Mines Company up to the time of the returning of this indictment, and the said defendants never intended that shipment should or could be made of coal by the said Great Western Coal Mines Company for the said 1922 season.

That said defendants and each of them, thruout the period of time hereinbefore alleged, well knew of the falsity and fraudulent and misleading character of said representations, claims, promises, and pretenses, and of the falsity and fraudulent character and purposes of said artifice and scheme and device; and that all and singular of the false and fraudulent statements, representations, pretenses, and promises hereinbefore set forth would be, and were intended by said defendants and each of them to be made and done for the fraudulent purpose on the part of the said defendants and each of them to deceive the said persons so to be defrauded, and fraudulently to induce said persons and each of them, to advance, pay and send, sums of money and other valuable property to said defendants, their agents and representatives, or to said Cedar Mesa Farm, Inc., or said Great Western Coal Mines Company, as loans to said Great Western Coal Mines Company, or as the purchase price for pretended first-mortgage bonds, or town-site lots of said Great Western Coal Mines Company, and to cheat and defraud said persons so to be defrauded as aforesaid, with the intent then and there on the part of said defendants and each of them to convert said sums of money and other valuable property so fraudulently obtained as aforesaid, either in whole or in part, to the use, gain and benefit of the said defendants and each of them.

That said defendants on or about the 25th day of November, 1921, at Salt Lake City, State and Central Division of the District of Utah, aforesaid, and within the jurisdiction of this court, for the purpose of executing said scheme and artifice to defraud and in attempting so to do, did then and there, knowingly, wilfully, unlawfully, and feloniously place and cause to be placed in the post office of the United States at Salt Lake City aforesaid, to be sent and delivered by the post-office establishment of the United States, a certain letter enclosed in an envelope, postage prepaid, and addressed to Mr. C. W. Wandell, Murray, Utah, which said letter was then and there of the tenor following, to wit:

Great Western Coal Mines. General offices 902 Clift Building, Telephone Wasatch 2610. Mines, Carbon County, Utah. Branch office, Helper, Utah. Fiscal agents: Earl J. Welch, Jos. S. Welch, C. M. Croft, Geo. A. Storrs

SALT LAKE CITY, UTAH, Nov. 29, 1921.

Mr. C. W. WANDELL,
Murray, Utah.

DEAR SIR: We received your certificate of guarantee this morning, and are enclosing stock certificate for 300 shares of Great Western Coal Mines stock.

The company has been given permission, by the State Securities Commission, to sell three hundred thousand dollars' worth of first mortgage gold bonds. To the holders of certificate of guarantee who desire to turn in the cash value of the certificate as payment for bonds, the company will give, as bonus, one share of stock for every dollar in bonds purchased. There has been a great many of our certificates of guarantee holders who turned in their certificates on bonds, the bonds bear 8 per cent interest from Nov. 1st, 1921, and are secured by all the holdings of the company. If you wish to purchase one of these one hundred dollar bonds just return your certificate to us and we will mail you the bond, together with stock certificate for 100 shares.

It will probably be about January or February first before
39 the money can be returned to you in the event you do not wish to buy bonds with the certificate.

Please let us hear from you, and oblige,

Yours truly,

GREAT WESTERN COAL MINES CO.,

LW V

By J. L. WELCH,

They, the said defendants then and there well knowing the said letter to be of and concerning said scheme and artifice to defraud and for the purpose of executing the same and attempting so to do, as aforesaid; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

And the grand jurors aforesaid, upon their oaths as aforesaid, do further present and find:

Third count

That said George A. Storrs, the said Jos. S. Welch, the said Earl J. Welch, and the said Charles M. Croft, hereafter called defendants, so having devised said scheme and artifice to defraud and to obtain money under false and fraudulent pretenses, representations, and promises, described and set forth in the second count of this indictment, the allegations concerning which in said second count are incorporated by reference thereto in this count as fully as if they were here repeated, for the purpose of executing said scheme and artifice to defraud and attempting so to do, at Salt Lake City aforesaid, in the State and Central Division of the District of

Utah, and within the jurisdiction of this court, on or about
40 the 7th day of December, 1921, did then and there knowingly, wilfully, unlawfully, and feloniously, place and cause to be placed in the post office of the United States at Salt Lake City aforesaid, to be sent and delivered by the post office establishment of the United States, a certain letter, enclosed in an envelope, postage

prepaid, and addressed to Mr. P. L. Ward, Springville, Utah, which said letter was then and there of the tenor following, that is to say:

Great Western Coal Mines. General offices, 902 Clift Building. Telephone, Wasatch 2610. Mines, Carbon County, Utah. Branch office, Helper, Utah. Fiscal agents: Earl J. Welch, Jos. S. Welch, C. M. Croft, Geo. A. Storrs

SALT LAKE CITY, UTAH, Dec. 7, 1921.

Mr. P. L. WARD,

Springville, Utah.

DEAR SIR: We are enclosing bonds numbers A-46-47, B-1009, total three hundred fifty (\$350) dollars, together with three hundred fifty shares of stock for which you subscribed and paid for with your certificate of guarantee.

Thanking you again for the assistance given the company and with best wishes, we are,

Yours truly,

GREAT WESTERN COAL MINES Co.,

JLW V.

By J. L. WELCH.

41 They, the said defendants then and there will knowing the said letter to be of and concerning said scheme and artifice to defraud, and for the purpose of executing the same, and attempting so to do; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

And the grand jurors of the United States of America, aforesaid, upon their oaths as aforesaid, do further present and find:

Fourth count

That said George A. Storrs, the said Jos. S. Welch, the said Earl J. Welch, and the said Charles M. Croft, hereafter called defendants, so having devised said scheme and artifice to defraud and to obtain money under false and fraudulent pretenses, representations, and promises, described and set forth in the second count of this indictment the allegations concerning which in said second count are incorporated by reference thereto in this count as fully as if they were here repeated, for the purpose of executing said scheme and artifice and attempting so to do, at Salt Lake City aforesaid, State and Central Division of the District of Utah, and within the jurisdiction of this court, on or about the 9th day of December, 1921, did then and there, knowingly, wilfully, unlawfully, and feloniously place and cause to be placed in the post office of the United States at Salt Lake City aforesaid, to be delivered and sent by the post-office establishment of the United States a certain letter enclosed in an envelope, postage prepaid, and addressed to Mr. O. W. Wandell,

Murray, Utah, which letter was then and there of the tenor following, that is to say:

42 Great Western Coal Mines. General offices, 902 Clift Building. Telephone Wasatch 2610. Mines, Carbon County, Utah. Branch office, Helper, Utah. Fiscal agents: Earl J. Welch, Jos. S. Welch, C. M. Croft, Geo. A. Storrs.

SALT LAKE CITY, UTAH, *Dec. 9, 1921.*

Mr. C. W. WANDELL,
Murray, Utah.

DEAR SIR: In answer to your letter of Dec. 7th, we desire to state that we are extremely sorry that you cannot find your way clear to accept our very excellent proposition that we are making to our stockholders in securing an 8 per cent gold bond with an additional share of stock for each dollar loaned in lieu of the money returned, but we appreciate very much your interest shown in the Great Western Mines Company, and any time you are in Salt Lake City call at our office, 902 Clift Bldg., as we are very anxious to become acquainted with all of our stockholders.

Best wishes, we remain,

Very respectfully,

GREAT WESTERN COAL MINES CO.,

CMC V

By CHAS. M. CROFT, *Sec't.*

They, the said defendants, then and there well knowing the said letter to be of and concerning said scheme and artifice to defraud and for the purpose of executing the same and attempting so to do, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

43

A. P. BIGELOW,

Foreman of the Grand Jury.

CHARLES M. MORRIS,

United States Attorney.

EDWARD M. MORRISSEY,

Assistant United States Attorney.

Witnesses: George Woolley, Heber C. Hicks, Jessie E. Sandford, Serge B. Campbell, E. L. Jackson, E. J. Keefe, George Bywater, Shekrey Sheya, C. R. Greene, Nijib (Jim) Sheya, A. E. Gibson, Lawrence T. Dee, E. F. Soderberg, Heber C. Jex, S. H. Drysdale, O. S. Drysdale, Mrs. D. M. Gray, Lewis Herrick, George V. Morris, C. W. Wandell, F. C. Bertolina, Celeste Diapaz, John Gabatz, Joe Ossana, R. S. Lund, George Rasmussen, Fred Clark, Mrs. E. A. Fuller, Lars A. Johnson, Charles Anderson, Herman Niepag, Arvill Miller, C. A. Sandquist, W. J. Warner, Andy Kopasick, George P. Bosovich, John Zrno, Herman Teichman, C. M. Hansen, Frank F. Ulrich, Joe Colzani, Edward Wells, Patrick L. Ward, James H. Dunkley, A. L. Welliver, Hyrum E. Crockett, Harvey Cluff.

[File endorsement omitted.]

In United States District Court

Plea of not guilty

Nov. 15, 1924

At this 15th day of November, 1924, comes Charles M. Morris, United States attorney, and the said defendants in their own proper persons, and the said George A. Storrs by Jacob Evans, his attorney, and the defendants Joseph S. Welch, Earl J. Welch, and Charles M. Croft, by Thos. W. O'Donnell, their attorney, also come. And said defendants are arraigned, and each saith that his true name is as charged, each waives the reading to him of this indictment, and on being required to plead thereto, each saith that he is not guilty as therein charged. And of this they put themselves upon the country and the said United States attorney doth the like.

In United States District Court

Order allowing withdrawal of pleas of not guilty

Feb. 24, 1925

At this 24th day of February, 1925, comes Charles M. Morris, United States attorney, and the defendant, George A. Storrs, by Jacob Evans, his attorney, and the other defendants by M. E. Wilson and Dan B. Shields, their attorneys, also come. And on their motion and by leave of court each of said defendants withdraws the plea of not guilty heretofore by him pleaded to this indictment and file their pleas in abatement. And it is further ordered that
45 the hearing of said pleas be set for the 25th day of February, 1925.

In United States District Court

Plea in abatement of defendant George A. Storrs filed

Feb. 24, 1925

And now comes George A. Storrs, one of the above named defendants, and says that he ought not to be further held to answer to said indictment, and that the same should abate because, he says, that at the time and place of and on the occasion when the grand jurors of the United States of America for the territory comprising the Northern and Central Division of the District of Utah were hearing, inquiring into, and examining the matter of the presentation of the indictment now returned into court against these defendants, one Edward M. Garnett, the official court stenographer of the United States District Court, and divers other persons whose names are to this defendant unknown, not members of said grand jury and not

persons lawfully authorized to be and remain with said grand jurors while they were so conducting said inquiry, were present with said grand jurors while they were so hearing, inquiring into, and examining the matter of presenting said indictment.

And the said defendant further says that said indictment should be abated because, at the sitting of said grand jurors and while they were considering the matter of said indictment and the complaints

recited therein, and while said grand jurors were hearing testimony concerning the same, there was present in said grand jury room with said grand jurors and within the hearing of what transpired and listening to what was said, with the consent of the United States district attorney, a person who was not district attorney representing the United States of America, nor a witness in said cause, nor was such person authorized by law to be in said grand jury room at said time.

And said defendant says said indictment should be abated because said person unauthorized to be in said grand jury room as aforesaid was one Edward M. Garnett, stenographer, who pretended to take down in shorthand the evidence given by each and all of the witnesses who were called and examined before said grand jury and who has, since the finding of said indictment, reduced said shorthand notes to typewriting for the use and benefit of the United States district attorney and such person or persons as said United States district attorney might permit to use said testimony; that thereby the secrecy of the proceedings before said grand jurors was destroyed and the hearing became public, contrary to law.

And said defendant further says that said indictment should be abated because not only that said testimony was taken in shorthand by said Edward M. Garnett, as aforesaid, but also because said Edward M. Garnett had in no wise or at all been appointed by any officer of the United States to in any wise or at all conduct said proceedings before said grand jurors; that said Edward M. Garnett was not authorized or appointed to in any manner or at all assist the United States district attorney in conducting said proceedings as a counsellor or attorney-at-law, but was present at said proceedings

and before said grand jurors only for the purpose of transcribing the testimony of the witnesses sworn and heard before said grand jury as a stenographer, and for no other purpose; that said Edward M. Garnett, in so taking or transcribing said notes did not act as an attorney or counsellor-at-law, either pursuant to appointment or otherwise or at all, and that the presence of said Edward M. Garnett in taking said stenographic notes was in violation of law and contrary to and in violation of the fifth amendment of the Constitution of the United States, which in no manner or at all permits any person to be present while testimony is being taken before a grand jury, except the United States district attorney or some one acting in that capacity, and that said Edward M. Garnett was not in any sense acting in said capacity.

And said defendant says that said indictment should be abated because the United States district attorney for the District of Utah took part in the deliberations of the grand jury and was present in said grand jury room for a time while said grand jury was deliberating upon the matter of finding said indictment; that said United States district attorney, after said testimony had been heard by said grand jury, either at the request of some of the grand jurors or of his own volition, undertook to restate some portions of the testimony that had been heard by said grand jurors, and undertook to give a summary of the testimony as it had been given by said witnesses, and thereby substituted his own recollection of the testimony for that of the grand jurors, and thereby undertook to aid the grand jurors in recalling said testimony; and, further, that

48 said United States district attorney, during the course of the deliberations of said grand jury, advised said grand jurors that any indictment, if found, must be against all of the above named defendants, and thereby the said grand jury and its members were unlawfully and erroneously influenced in finding the aforesaid indictment.

And the aforesaid statements this defendant stands ready to verify by competent proof.

Wherefore this defendant prays that the aforesaid indictment be abated and held for naught and that the defendant be not required to answer to the same.

JACOB EVANS,

Attorney for Defendant, George A. Storrs.

Received copy of foregoing plea in abatement this 24th day of February, 1925.

CHAS. M. MORRIS,

United States Attorney.

[File endorsement omitted.]

In United States District Court

Plea in abatement of Defendants Joseph S. Welch et al.

Filed Feb. 24, 1925

And now come Joseph S. Welch, Earl J. Welch, and Charles M. Croft, three of the above-named defendants, each for himself and not one for the other, and say that they ought not to be further held to answer to said indictment, and that the same should abate 49 because, they say, that at the time and place of and on the occasion when the grand jurors of the United States of America for the territory comprising the Northern and Central Division of the District of Utah, were hearing, inquiring into, and examining the matter of the presentation of the indictment now returned into court against these defendants, on Edward M. Garnett, the official court stenographer of the United States District Court, and divers

other persons, whose names are to these defendants unknown, not members of said grand jury and not persons lawfully authorized to be and remain with said grand jurors while they were so conducting said inquiry, were present with said grand jurors while they were so hearing, inquiring into, and examining the matter of presenting said indictment.

And the said defendants further say that said indictment should be abated, because at the sitting of said grand jurors and while they were considering the matter of said indictment and the complaints recited therein, and while said grand jurors were hearing testimony concerning the same, there was present in said grand-jury room with said grand jurors and within the hearing of what transpired concerand listening to what was said, with the consent of the United States district attorney, a person who was not district attorney representing the United States of America, nor a witness in said cause, nor was such person authorized by law to be in said grand-jury room at said time.

And said defendants say said indictment should be abated because said person unauthorized to be in said grand-jury room as aforesaid was one Edward M. Garnett, stenographer, who pretended to take
50 down in shorthand the evidence given by each and all of the witnesses who were called and examined before said grand jury, and who has, since the finding of said indictment, reduced said shorthand notes to typewriting for the use and benefit of the United States district attorney, and such person or persons as said United States district attorney might permit to use said testimony; that thereby the secrecy of the proceedings before said grand jurors was destroyed and the hearing became public, contrary to law.

And said defendants further say that said indictment should be abated because not only that said testimony was taken in shorthand by said Edward M. Garnett, as aforesaid, but also because said Edward M. Garnett has in no wise or at all been appointed by any officer of the United States to in any wise or at all conduct said proceedings before said grand jurors; that said Edward M. Garnett was not authorized or appointed to in any manner or at all assist the United States district attorney in conducting said proceedings as a counsellor or attorney-at-law, but was present at said proceedings and before said grand jurors only for the purpose of transcribing the testimony of the witnesses sworn and heard before said grand jury as a stenographer, and for no other purpose; that said Edward M. Garnett, in so taking or transcribing said notes did not act as an attorney or counsellor-at-law, either pursuant to appointment or otherwise or at all, and that the presence of said Edward M. Garnett in taking said stenographic notes was in violation of law and contrary to and in violation of the fifth amendment of the Constitution of the United States, which in no manner or at all permits any

51 person to be present while testimony is being taken before a grand jury, except the United States district attorney, or some one acting in that capacity, and that said Edeard M. Garnett was not in any sense acting in said capacity.

And said defendants say that said indictment should be abated because the United States district attorney for the District of Utah took part in the deliberations of the grand jury and was present in said grand jury room for a time while said grand jury was deliberating upon the matter of finding said indictment; that said United States district attorney, after said testimony had been heard by said grand jury, either at the request of some of the grand jurors or of his own volition, undertook to restate some portions of the testimony that had been heard by said grand jurors, and undertook to give a summary of the testimony as it had been given by said witnesses, and thereby substituted his own recollection of the testimony for that of the grand jurors, and thereby undertook to aid the grand jurors in recalling said testimony; and, further, that said United States district attorney, during the course of the deliberations of said grand jury, advised said grand jurors that any indictment, if found, must be against all of the above named defendants, and thereby the said grand jury and its members were unlawfully and erroneously influenced in finding the aforesaid indictment.

And the aforesaid statements these defendants stand ready to verify by competent proof.

Wherefore these defendants pray that the aforesaid indictment be abated and held for naught, and that the defendants be not required to answer to the same.

52

DAN B. SHIELDS,

M. E. WILSON,

*Attorneys for defendants, Joseph S. Welch,
Earl J. Welch, and Charles M. Croft.*

Received copy of foregoing plea in abatement this 24th day of February, 1925.

CHAS. M. MORRIS,
United States Attorney.

[File endorsement omitted.]

In United States District Court

Opinion

Filed Mar. 6, 1925

This question raised by the plea in abatement in this case *case* have never been before the Circuit Court of Appeals of this circuit. The Supreme Court could have refused, and probably did refuse, to grant a writ of certiorari in the Wilkes case, 263 U. S. 716, 719, because of the state of the record in that case.

In view of the uncertainty in respect of the ground upon which the application for the writ was refused by the Supreme Court, and in view of the conflict in the decisions of the lower Federal courts, both trial and appellate. I feel free to exercise my own judgment and decide the matters presented by the plea in abatement in accordance with what I conceive to be the better reasons.

53 The grand jury system was created and developed as a bulwark of the private citizen against the aggressions of the English Crown. This character was secured and maintained through the secrecy of its proceedings and the independence of its action. It may be that in these modern days of enlightened progress under a free government there is less reason for the continued existence of these ancient landmarks originally erected to protect the citizen against a strong and sometimes unscrupulous government. However that may be, it is just as well to remember that zeal and aggression often come to the same end in actual results. The distinguishing characteristics of the grand jury system which justified its existence in the past, and, aside from the requirements of the Constitution, which justifies its continuance in the future, should not be jeopardized by any strained statutory construction or arbitrary judicial pronouncement in the interest of convenience to government prosecuting or investigating officers.

The right to perpetuate a record of the evidence in one case being conceded, the right to do so in every case must be allowed. To say that there may be a permanent record of the evidence taken before a grand jury made and kept outside of and beyond the supervision and control of the court, forever thereafter accessible to and capable of being used by men in nowise connected with the grand jury investigation, even though public officers, is a perversion of the grand jury system and will sooner or later work injustice to parties investigated; and witnesses making full disclosure before a grand jury, without particular regard to the strict rules of evidence,

54 should not be required to take the chance of being called upon outside a court room to explain their testimony so given to the party under investigation, or his friends, long after the investigation should have been forgotten and the testimony given consigned to the oblivion originally contemplated, and observed until recent years.

In my opinion the plea in abatement in this case is well taken and judgment will be entered accordingly.

[File endorsement omitted.]

In United States District Court

Order granting pleas in abatement

Mar. 6, 1925

At this 6th day of March, 1925, the separate pleas in abatement of said defendants having heretofore come on regularly for hearing,

upon said pleas, the oral demurrer thereto, and the evidence introduced, and the same having been argued by counsel and submitted and by the court taken under advisement, now after due consideration and the court being well advised in the premises doth sustain said pleas, in accordance to a written opinion this day handed down and filed herein, counsel to prepare and submit a form of judgment to be entered herein.

55

In United States District Court

Judgment filed

March 6, 1925

The defendants in the above-entitled cause, and each of them, having heretofore by leave of court first had and obtained withdrawn their pleas of not guilty, and having by leave of court each filed his plea in abatement in the above-entitled cause, seeking thereby to quash and abate the indictments in said cause, and said pleas having come on for hearing before the court upon the demurrers of the plaintiff, and upon the evidence introduced by the plaintiff and the defendants, and the arguments of counsel for said parties, and the court being now fully advised in the premises,

It is hereby ordered, adjudged, and decreed that the prayers of said pleas in abatement of said defendants to set aside, abate, and hold for naught and quash said indictments be and the same are hereby granted as to each of said defendants, and said indictments are hereby quashed and abated as to each of said defendants.

Exceptions are hereby allowed to the plaintiff as to each of the defendants herein.

Done in open court this 6th day of March, A. D. 1925.

TILMAN D. JOHNSON, *Judge*.

[File endorsement omitted.]

56

[Petition for rehearing, covering 2 pages, filed March 13, 1925, omitted from this print. It was denied and nothing more by order. April 8, 1925.]

58

In United States District Court

Order denying petition for rehearing

April 8, 1925

At this 8th day of April, 1925, comes Charles M. Morris, United States attorney, and the said defendants by M. E. Wilson, their attorney, also come. And the petition of the United States of America for a rehearing upon the pleas in abatement heretofore granted and the order quashing the indictment as to each of said defendants

coming on now regularly to be heard, each of said defendants object to the said petition being entertained by the court on the ground that there is no authority of law for the same, and the court being well advised in the premises doth overrule said objection, to which ruling each of said defendants excepts, and the court after due consideration doth deny said petition for a rehearing, to which ruling said United States attorney then and there duly excepted.

In United States District Court

Bill of exceptions

Filed April 23, 1925

59 Be it remembered, that on this twenty-fifth day of February, in the year of our Lord nineteen hundred and twenty-five, the above-entitled cause came on for hearing upon the pleas in abatement herein, before the Honorable Tillman D. Johnson, judge of said court, the United States being represented by Charles M. Morris, Esq., United States district attorney, the said defendant George A. Storrs, being represented by Jacob Evans, Esq., his attorney, and the said defendants Joseph S. Welch, Earl J. Welch, and Charles M. Croft being represented by M. E. Wilson, Esq., and D. B. Shields, Esq., their attorneys, and thereupon the following proceedings were had:

Colloquy between court and counsel

The COURT. Gentlemen, are you ready to proceed?

Mr. MORRIS. Ready, if the court please.

Mr. MORRIS. If the court please, it appears in this case, which is United States of America, plaintiff, versus George A. Storrs, Joseph S. Welch, Earl J. Welch, and Charles M. Croft, defendants, that two pleas in abatement have been filed, one plea in abatement on behalf of the defendants, Joseph S. Welch, Earl J. Welch, and Charles M. Croft, and the other plea in abatement on behalf of the defendant George A. Storrs.

It appears further that both pleas are substantially in the same language, I understand exactly in the same language, except for the necessary change in names, and so forth.

Mr. WILSON. Yes.

Mr. MORRIS. Now, if the court please, with reference to the pleas in abatement filed on behalf of the defendants, Joseph S. Welch, Earl J. Welch, and Charles M. Croft, I desire at this time and do demur to the plea in abatement upon the following grounds:

60 First: That the plea in abatement does not allege any prejudice or injury to the defendants or either of them by reason of the matters and things set forth in the plea.

Secondly, upon the ground that the plea does not allege any facts upon which prejudice or injury to the defendants, or either one of them, could be based or predicated.

Thirdly, upon the ground that the last paragraph of the plea, which begins at the center of the middle of page 3 of the typewritten copy is too uncertain and indefinite as to amount to a valid objection to the indictment, in that the plea, and particularly this paragraph of the plea, does not allege who of the defendants, if any, was injured or prejudiced by the matters set forth in said paragraph.

I further demur to the plea in abatement interposed on behalf of the defendant George A. Storrs, and for grounds of demurrer I ask that the same grounds heretofore set forth and given as grounds for demurrer to the plea in abatement as to the other defendants be set forth as to the demurrer with respect to the plea in abatement of the defendant George A. Storrs, without repeating or reiterating the grounds.

Is that satisfactory, Mr. Evans?

MR. EVANS. Yes.

MR. MORRIS. If the court please, inasmuch as the argument on this demurrer, or these demurrers, is so interwoven with the main argument of the case I would suggest, in economy of time and repetition, that the argument as to the demurrers be submitted in connection with the other argument, which undoubtedly will be submitted on other issues involved in this matter.

THE COURT. Is that satisfactory?

MR. WILSON. That is satisfactory as far as I am concerned.

MR. EVANS. Yes; that is all right.

MR. MORRIS. I will say, in view of the lateness of the hour yesterday when I received a copy of the pleas, I did not have time to make a written, or prepare a written, demurrer to either one of the pleas; therefore I spoke at least to Mr. Wilson this morning, representing three of the defendants, if it would be satisfactory if I made the demurrer orally, which he assented to. Is that correct, Mr. Wilson?

MR. WILSON. That is correct.

MR. MORRIS. Is that satisfactory, Mr. Evans?

61 MR. EVANS. Yes.

MR. WILSON. In order to make up the record as far as the clients I represent are concerned, Mr. Morris might well have this transcribed and formally filed in the record, if he prefers to do so. I think it would make a better record, your honor.

THE COURT. When it comes to making up a record, it can be copied and filed in the usual way as a paper in the case.

MR. WILSON. That is satisfactory. Then, I take it, at this time, your honor, the demurrer will be overruled without argument, subject to the right to argue it later?

THE COURT. I will just consider it as submitted, and you may proceed to introduce your testimony upon the merits of the case so we will have both matters before us when you do argue it.

WAYNE T. WILCOX was thereupon called as a witness by the defendant, and, being duly sworn, testified as follows:

Direct examination by Mr. WILSON:

Q. What is your business, Mr. Wilcox?

A. I am assistant secretary of the Halloran-Judge Trust Company.

Q. You reside in Salt Lake City, Utah?

A. Yes, sir.

Q. Have resided here for many years?

A. Yes, sir.

Q. Mr. Wilcox, were you a member of the grand jury that returned the indictment in this case before the court?

A. Yes, sir.

Q. When did that grand jury sit?

A. Started some time in September and finished in October.

Q. Could you give the exact dates?

A. No; I could not.

The COURT. May we agree upon the dates as the record shows?

Mr. MORRIS. Yes.

Mr. WILSON:

Q. About how long did you sit in considering this case?

A. About four days.

62 Q. Here in the Federal court room?

A. Yes, sir.

Q. I will ask you, Mr. Wilcox, whether you know Edward M. Garnett, the court reporter here?

A. I know him by sight; yes, sir.

Q. Was he present in the grand jury room during the taking of the testimony in this case?

A. Yes, sir.

Q. Where the grand inquest, as we call it, was held?

A. Yes, sir.

Q. Throughout the entire time?

A. No; not exactly.

Q. That is, throughout the entire time that the testimony was taken?

A. Yes, sir.

Q. Did he do anything in the grand jury room except to take the testimony?

A. No, sir.

Q. That you observed. After the taking of that testimony, did he retire?

A. He did.

Q. That is, when you came to consider, you jurors, you and your cogrand jurors came to consider the testimony, Mr. Garnett was not present?

A. No, sir.

Q. Now, was Mr. Charles M. Morris present during the taking of the testimony?

A. Yes, sir.

Q. United States district attorney?

A. Yes, sir.

Q. Did he interrogate the witnesses?

A. Yes, sir.

Q. After the testimony had been taken, I will ask you whether or not Mr. Morris in any manner went over the testimony with the grand jury.

63 Mr. MORRIS. Now, if the court please, I object to this question upon two grounds; first, upon the ground that the question is too indefinite, and secondly, upon the ground that a grand juror, under his oath of office, cannot disclose what took place with reference to the proceedings before a grand jury, and thirdly, upon the ground that it is incompetent, irrelevant, and immaterial.

Mr. WILSON. As to the indefinite character of the question, your honor, perhaps I can make it a little plainer, but as to the balance of the objections, I resist them.

The COURT. Reframe your question.

Mr. WILSON:

Q. I will ask you whether or not, Mr. Morris in any manner restated the important points of this testimony to the grand jury after the testimony had been taken?

A. Yes, sir.

The COURT. You make your objection?

Mr. MORRIS. Yes; before the answer is given.

The COURT. That may go out.

Mr. MORRIS. I object to the question upon the ground that it is immaterial, irrelevant, incompetent; upon the further ground that the testimony of the witness discloses that he was a member of this particular grand jury and as such cannot either under his oath as a grand juror or otherwise make disclosures of the proceedings occurring in the grand jury room.

The COURT. I will overrule the objection; you may move to strike it out. I will strike it out if your point seems to be true.

Mr. MORRIS. Exception.

Mr. WILSON. You may answer the question now.

A. After the proceedings, after the testimony had been given, he made a brief résumé of the salient points of the testimony that had been offered, at the request of the grand jurors.

Q. About how long? You say briefly?

A. Oh, possibly didn't take more than three or four minutes, just a very brief outline.

Q. And in that went over, as you say, the salient points of the testimony that had been introduced?

64 A. Yes, sir.

Q. Some grand jurors requested that?

A. Yes, sir.

Q. After the grand jury had deliberated upon this testimony and the matter for some little time, I will ask you whether Mr. Morris was again sent for?

A. Yes, sir; he was.

Q. By the grand jury?

A. Yes, sir.

Q. I will ask you whether or not at that time any question was put to him—just answer that yes or no.

A. Yes; it was.

Q. And what was that question?

A. He was asked whether or not it would be possible for an indictment to be rendered against certain of the defendants and not the others.

Q. And what did Mr. Morris reply?

A. He replied that it would be impossible to segregate the defendants, that if an indictment was brought, it would have to be brought against all of them, or not any.

Q. And then did he retire without further conversation?

A. Yes, sir.

Mr. WILSON. Cross-examine.

Cross-examination by Mr. MORRIS:

Q. State whether or not Mr. Morris suggested the returning of an indictment.

A. He did not.

Q. As against all the defendants or any one?

A. No, sir; he did not.

Q. State if it is not a fact that Mr. Morris said the indictment would be brought against any one or all of the defendants.

A. Not to my knowledge.

Q. Isn't it a fact, Mr. Morris made that statement on several occasions during the proceedings of this case?

65 A. Not to my knowledge.

Q. Isn't it a fact, Mr. Morris made that statement on several occasions during the proceedings of this case?

A. Not to my knowledge; no, sir.

Q. Can you recall just what Mr. Morris said with respect to the returning of an indictment against the defendants, if anything?

A. Mr. Morris made this statement, that after we had asked him whether or not it would be possible to render an indictment against some of the defendants and not all, he said that an indictment, if brought, would have to include all of the defendants and they could not be segregated.

Q. Did Mr. Morris mention any names?

A. No, sir.

Q. Did any grand juror suggest to Mr. Morris the name of any person who should not be or who should be included in an indictment in case one was brought?

A. No, sir.

Q. No names were mentioned at all?

A. No, sir.

Mr. MORRIS. That is all.

Mr. WILSON. That is all.

CHARLES M. CROFT was thereupon called as a witness and being duly sworn, testified as follows:

Direct examination by Mr. WILSON:

Q. State your name to the court.

A. Charles M. Croft.

Q. Are you one of the defendants in this case?

A. Yes, sir.

Q. Were you before the grand jury as a witness when the grand inquest was held before this indictment was returned?

A. Yes, sir; I was before the grand jury.

Q. I will ask you, Mr. Croft, when you were before the grand jury, whether Mr. Edward M. Garnett, the court reporter here, was present in that room?

66 A. Yes, sir.

Q. What was he doing?

A. He was taking down the testimony.

Q. In shorthand?

A. Yes, sir.

Q. About how long were you before the grand jury?

A. Oh, I think it may have been about an hour.

Q. And during all that time was Mr. Garnett there?

A. Yes, sir.

Q. Was there any other person except the grand jurors, Mr. Garnett and Mr. Morris, United States district attorney—

A. Mr. Morris was not there.

Q. He was not there at the time?

A. He was not there. No one else that I know of.

Q. No one else except Mr. Garnett and the grand jury, that you know of?

A. That is correct.

Q. In other words, you didn't know, I don't presume, the members of the grand jury?

A. I was acquainted with some of them, but some were strangers to me.

Q. Was there any person pretending to act as assistant district attorney there?

A. No.

Q. While you were there?

Mr. MORRIS. I object to that as calling for a conclusion.

The COURT. You mean by that asking questions?

Mr. WILSON. Yes.

Q. In other words, were you interrogated by the grand jurors, or by some person who was asking questions to aid the grand jury, is all I intend.

A. By the grand jury.

Q. By the grand jury. After this indictment was returned, did you see a transcript of your testimony?

67 A. I saw a part of the transcript of my testimony.

Q. Where did you see it?

A. I saw it in the auditors' room, the auditors that were auditing the books for the Government in this building.

Q. The Government auditors?

A. Yes, sir.

Q. What are their names?

A. Now, I don't know the name of one of them; Mr. Keefe was in the room at the time and was assisting in the work.

Q. Who was Keefe?

A. Keefe was the man that made the former investigation for land office on the Bird entry.

Q. Government employee or officer?

A. Employee.

Q. Special agent?

A. Special agent.

Q. Did he have what purported to be a typewritten transcript of your testimony given before the grand jury?

A. Yes, sir.

Q. Did you read some of it?

A. I read some of it.

Cross-examination by Mr. MORRIS:

Q. You don't know whether that was a typewritten copy of your testimony or not, do you?

A. Yes, sir; it was.

Q. How do you know?

A. Because I read a part of it.

Q. Is that the only means you have of knowing?

A. That is the only means; of course, it was written there verbatim as I had given it before the grand jury?

Q. You remembered that, did you?

A. Yes, sir.

Q. You didn't ascertain from any certificates of the person
68 who reported or recorded it that it was your testimony, did you?

A. No, I didn't.

Q. You draw your conclusion merely from your recollection of what you said before the grand jury?

A. Yes, sir; that is correct. It was written there just as I had testified.

Q. According to your recollection.

A. Oh, yes; certainly.

Q. You were before the grand jury at your own request?

A. Yes, sir; that is correct.

Mr. MORRIS. That is all.

Mr. WILSON. That is all.

EDWARD M. GARNETT was thereupon called as a witness and, being duly sworn, testified as follows:

Direct examination by Mr. WILSON:

Q. State your full name to the court.

A. Edward M. Garnett.

Q. You are the official court reporter for this court?

A. I am the acting reporter of this court.

Q. Well, I beg your pardon if I haven't stated the title correctly.

A. There is no official reporter in this court except in equity cases.

Q. And in all other matters you have generally acted, have you not?

A. I have.

Q. Are you admitted as an attorney at law by the supreme court of this State?

A. I am.

Q. Have you ever been admitted to the Federal court?

A. I have.

Q. You do not practice law, however?

A. I do not.

69 Q. And never have pretended to?

A. I have.

Q. How long since?

A. About twenty years?

Q. By that answer, do you mean you have not practiced in twenty years?

A. That is what I mean.

Q. And you were not practicing law at the time the grand jury held its grand inquest in the case at bar?

A. I was not.

Q. You were present in the grand jury room during the taking of the testimony at that grand inquest, were you not?

A. I was.

Q. You were not there as an assistant United States attorney were you?

A. I was so designated by the Attorney General of the United States.

Mr. WILSON. I move that the answer be stricken on the ground it is not responsible.

The COURT. I think I will let it stand. Let's develop what the facts were. You can argue it later.

Mr. WILSON. I would like to have an exception so my record is made.

The COURT. Very well.

Mr. WILSON :

Q. You were not acting as an attorney in the grand jury room, were you?

A. I was not.

Q. You were there simply as a stenographer taking down shorthand notes of the witnesses giving the testimony before that grand jury?

A. That is what I did.

Q. And that is all that you did?

A. It is.

70 Q. And you did take down the testimony of all the witnesses who appeared before the grand jury, so far as you know, in this matter?

A. Yes.

Q. Took it down in shorthand?

A. Yes.

Q. And afterwards transcribed it into typewriting?

A. Caused it to be transcribed.

Q. Well, it was done under your direction, anyhow?

A. It was.

Q. And your custom in doing that has been to dictate it to a dictaphone and then have a typist write it out on a machine?

A. Ordinarily; not always.

Q. Did you do that in this case?

A. I did.

Q. And how many persons worked on that testimony in transcribing it?

A. One, and possibly two.

Q. How many copies of that transcript did you make?

A. I made an original and one copy.

Q. To whom did you deliver the original and one copy of the transcript?

A. I delivered the original to Mr. Morris, Charles M. Morris, United States district attorney, and I have the copy in my possession at the present time.

Q. The original you delivered to Mr. Charles M. Morris, United States district attorney?

A. I did.

Q. And what became of it after that; I presume you don't know?

A. I do not.

Q. About how long, if you can tell me, did the taking of the testimony—how long a time did it consume, Mr. Garnett, before the grand jury? Can you tell me accurately, without looking it up?

A. I can not tell you accurately without looking it up, but to my recollection it was about four days.

71 Q. I assume you could later examine your transcript of your notes and give us the length of time absolutely correct, could you not?

A. I could.

Q. Mr. WILSON. Will you do that, and may he do that for the benefit of the record?

Mr. MORRIS. That is satisfactory.

Mr. WILSON. That is all.

Mr. WILSON. I would like to add to the objection I made, your honor, to strike out on the ground it was not responsive, on the ground also it was incompetent and not the best evidence.

The COURT. Let the record so show.

Mr. WILSON. And I have an exception to the ruling of the court.

Cross examination by Mr. MORRIS:

(Exhibit 1 marked by the reporter.)

(Exhibit 1A marked by the reporter.)

(Exhibit 2 marked by the reporter.)

Q. Mr. Garnett, I show you Exhibit 1 and ask you if that is the letter upon the authority of which you appeared before the grand jury on the occasion about which you have testified?

A. It is.

Mr. MORRIS. If the court please, we offer Exhibit 1.

Mr. WILSON. In behalf of the defendants Joseph S. Welch, Earl J. Welch, and Charles M. Croft, I ask to enter the following objection: We object to the introduction of Government Exhibit No. 1 on the ground that it is immaterial to the issue before the court, it already appearing from the testimony that E. M. Garnett did nothing before the grand jury except to act as a stenographer, and on the ground that Exhibit No. 1 is incompetent and irrelevant, incompetent to prove any matter or thing involved in this proceeding, and on the ground that it is irrelevant to any issue involved here, and on the ground that it does not authorize Edward M. Garnett to appear before any grand jury, or particularly the grand jury involved in this indictment and take testimony in shorthand or otherwise; and on the ground that if it does authorize any such proceeding on the part of E. M. Garnett, it is contrary to law and for that reason void.

72 The COURT. Do you make the same objection on behalf of your client?

Mr. WILSON. My associate here requests me to add that it is in violation of the fifth amendment to the Constitution of the United States, which I took it was included in the idea that it was contrary to law, but I assert that specifically.

Mr. EVANS. If the court please, on behalf of Mr. George A. Storrs, the defendant, we join in this objection.

The COURT. That is, you make it on behalf—

Mr. EVANS. We make it on behalf of George A. Storrs.

The COURT. Let the record so show.

Mr. MORRIS. If the court please, before ruling on that objection, mak I ask a question or two so that the matter will be fully before the court?

Mr. MORRIS:

Q. Mr. Garnett, state whether or not the investigation of the Great Western Coal Mines Company mentioned in Exhibit 1 was the investigation out of which the indictment in the instant case arose.

Mr. EVANS. We object to that, if the court please, because the indictment itself shows that it had absolutely nothing to do with the Great Western Coal Mines Company. The matters alleged in the indictment as I remember it are all before the organization of the Great Western Coal Mines Company.

Mr. WILSON. Same objection on behalf of the other defendants.

The COURT. I think you better put it this way, for the purpose of identification, show Mr. Garnett the indictment and ask him if the indictment, as he understands, was returned upon that investigation. I suppose you gentlemen will admit that.

Mr. MORRIS:

Q. Mr. Garnett, I show you the indictment returned into this court, No. 8489 Criminal, which is the file number in the United States Court for the District of Utah, and ask you to examine the indictment and state whether or not the investigation mentioned in Exhibit 1 of the Great Western Coal Mines Company resulted in the return of the indictment which is No. 8489 heretofore mentioned?

73 Mr. WILSON. We would like to have the same objection, your honor—I take it it is unnecessary to repeat it—that we have already made.

The COURT. Certainly; it is understood. All of his answers are subject to your objection.

Mr. EVANS. We would like to have it stated any objection that may be made on the part of Mr. Wilson may be regarded as made on the part of Mr. Storrs.

The COURT. It may be so understood hereafter, all objections may be understood as being in behalf of all and each of the defendants.

Mr. WILSON. Then I will make the objections in that form, if Mr. Evans gives me authority so to do.

The COURT. He seems to be giving you that authority.

Mr. EVANS. I am, your honor; that will save time.

A. The matters contained in this indictment referred to were the subject matter of the investigation referred to.

Mr. MORRIS:

Q. I will ask you, Mr. Garnett, whether or not during the presentation of the evidence before the grand jury, out of which indictment 8489 resulted, you furnished from time to time parts of tran-

script of the testimony taken before the grand jury, to the United States attorney for the District of Utah?

A. That is my recollection.

Q. State whether, during that period the United States attorney for the District of Utah had you refer to your notes to refresh the recollection of the district attorney with reference to certain matters mentioned by him at the time such request was made?

A. Yes; I remember such instances, but I could not specify what parts of the testimony the district attorney so requested.

Mr. MORRIS. We again renew our offer of Exhibit No. 1.

Mr. WILSON. We make the same objection in behalf of all the defendants, your honor. I take it it is not necessary to repeat it.

The COURT. No; it is understood. The objection as now renewed may be overruled.

Mr. WILSON. And these exceptions, your honor, I would
74 like to have them run for the benefit of each defendant severally and all of them jointly.

The COURT. It may be so understood; each defendant is making a separate objection and exception.

Exhibit 1

Address reply to "The Attorney General" and refer to initials and number. 36-77-3-8.

DEPARTMENT OF JUSTICE,
Washington, D. C., October 18, 1924.

Mr. E. M. GARNETT,

Salt Lake City, Utah.

SIR: You are hereby appointed a special assistant to the United States attorney, District of Utah, under the authority of the Department of Justice to assist in the trial of two mail fraud cases, namely, the Great Western Coal Mines Company, and the Consolidated Mascot Mines Corporation, in which the Government is interested; and in that connection you are specifically directed to conduct, in any judicial district where the jurisdiction thereof lies, any kind of legal proceedings, civil or criminal, including grand jury proceedings and proceedings before committing magistrates, which district attorneys are authorized by law to conduct.

Your compensation will be determined by the Attorney General upon the conclusion of your services and will be paid from the appropriation for "Miscellaneous expenses, U. S. Courts."

Please execute and return the inclosed oath of office.

Respectfully,

(Signed)

HARLAN F. STONE,
Attorney General.

Through the United States attorney.
(in ink) O K RLH

75 Mr. MORRIS:

Q. Mr. Garnett, did you, in accordance with the direction contained in Exhibit 1, file with the Attorney General of the United States an oath of office?

A. I did.

Q. I show you Exhibit 1-A and ask you if that is a true copy of the oath which you subscribed and filed with the exception, of course, that the blanks contained in the form which I show you were filled out by you in accordance with the instructions contained in Exhibit 1?

A. To the best of my recollection this is an exact copy.

Q. Can you, Mr. Garnett, fill in the blanks precisely as they were filled in the original?

A. Yes.

Q. Will you do so?

A. I am unable to state the exact date that the oath was subscribed. The oath was forwarded to the Attorney General, duly executed, on October 21, 1924, but my recollection is, it was executed before that date, and mailed later, on the date named.

Q. That is, you subscribed to the oath and executed it before a notary public residing at Salt Lake City, Utah?

A. I did.

Q. And that was done prior to the investigation of the grand jury with respect to the case of the Great Western Coal Mines Company?

Mr. WILSON. That is objected to on the ground it is a conclusion in addition to the grounds already made. The thing ought to speak for itself, and the record ought to speak for itself; not the best evidence.

Mr. MORRIS. Of course, that is true, that the original is the best evidence, but in view of the fact it was impossible to get the original—

Mr. WILSON. I am not complaining about that. My point is this—what date was this indictment filed in court?

Mr. MORRIS. It states on the back.

The COURT. The oath of the assistant is not filed in the clerk's office?

Mr. MORRIS. No; that was forwarded direct to the Attorney General.

76 Mr. WILSON. I don't want to be technical about that. I presume we can check up the date if it is not correct. Preserving my general objection, I will withdraw this last one.

The COURT. Is it a statutory oath?

Mr. WILSON. There is no statute on the subject.

Mr. MORRIS. It is prescribed by the department.

The COURT. Can't it be understood, under your objection, that the witness took the departmental oath?

Mr. WILSON. If he says so, we will not dispute it.

The COURT. Some time prior—

Mr. WILSON. I am not so certain about that, but I am somewhat confused about the date; that is, about when this hearing was held. That is why I wanted Mr. Garnett to state accurately when the hearing was held. If that statement were made, we can perhaps straighten out the rest of the matter.

The COURT. We can check that up.

Mr. MORRIS:

Q. Mr. Garnett, the copy of oath which is found in Exhibit 1-A, the blanks of which you have filled out, with the exception of the date when the same was subscribed, is an exact copy of the oath which you subscribed and took with reference to the Great Western Coal Mines Company investigation?

A. It is, to the best of my knowledge and belief.

Q. You did subscribe that oath, did you not?

A. I did, and forwarded the same—executed and forwarded the same to the Attorney General before the date of the hearing of the Great Western Coal Mines matter.

Q. I will ask you if you forwarded the oath by letter?

A. I did.

Q. I show you Exhibit 2 and ask you if that is an exact copy of the letter addressed to the Attorney General, Washington, D. C., in which you transmitted or forwarded the oath of office, a copy of which is marked "Exhibit 1-A"?

A. It is.

Q. And I ask you if you forwarded that on the day the latter bears date, October 21, 1924?

A. I did.

77 Mr. MORRIS. If the court please, we offer Exhibit 1-A.

The COURT. You make the same objection?

Mr. WILSON. I want to ask the witness a question or two.

Mr. MORRIS. I also offer Exhibit 2.

Mr. WILSON:

Q. In regard to Exhibit 1-A, Mr. Garnett, could you tell the date upon which you took that oath? Have you any means of telling?

A. Not without reference to the original, which was forwarded to Washington.

Q. Looking at Exhibit 2, which is a copy of letter which you sent to the Attorney General, I notice that is dated October 21. Does that in any wise refresh your recollection as to when you made the oath?

A. It does not.

Q. Exhibit No. 2 is the letter which you wrote to the Attorney General, and with that letter you enclosed the original of Exhibit 1-A, did you not?

A. I did.

Q. Don't you recall whether you made out the oath at the same time you wrote the letter, or substantially the same time, or made it out some time prior thereto?

A. I do not so remember, for this reason: Exhibit 1, which is the letter of authority from the Attorney General, in addition to the case you speak of, also mentions another case, to wit, the Consolidated Mascot Mines Corporation, which case, as I remember, was heard by the grand jury before the case you refer to—before the case at bar. The oath which I sent covered, of course, both cases.

Q. But at any rate, Mr. Garnett, you did not have any such authority with reference to either of the cases you have mentioned until you received Exhibit No. 1, did you?

A. I could not state definitely, Mr. Wilson, for the reason that my recollection is a telegram came first, to the district attorney's office, with reference to these cases.

Q. Exhibit No. 1, you will note, was written on the 18th day of October, 1924.

A. Yes.

78 Q. You did not receive it until some days after that?

A. I did not.

Q. And pursuant to Exhibit No. 1, you made out the oath which you testified to, did you not?

A. Either upon that or upon telegraphic authority to the district attorney.

Q. Then let us understand, you say on your oath that Exhibit No. 1 had anything to do with your taking the oath in this case?

A. Until I see the telegram, if there was such a telegram, and which I have not in my possession, I could not state that, Mr. Wilson.

Q. You could not state it had anything to do with this case?

A. The oath which I forwarded may have been executed upon the receipt of a telegram; of that I am not sure.

Q. And it may not have been executed upon receipt of a telegram?

A. It was executed and forwarded either upon the receipt of a telegram of authority or this letter, Exhibit 1.

Q. And dependent then, upon whether you received a telegram or not depends the materiality of Exhibit No. 1, does it not?

A. Do you want a legal opinion on that?

Q. No, I will take the fact. In other words the question is this, Mr. Garnett, you are not certain that Exhibit No. 1 had anything to do with your taking the oath, the original of which is evidenced by the copy, Exhibit 1-A?

A. I repeat, it was upon that or upon a telegram.

Q. That is the best answer you can give?

A. Yes, sir.

MR. WILSON. I want to make an objection to these documents, your honor, first to Exhibit No. 1—I have already objected and add to it that it now appears from the testimony that it may, or may not, be material; it is not shown to be material, and the grounds I have already stated. I stated to the district attorney, as far as the question of copy was concerned, while I wish to preserve all my other objections, your honor, to Exhibit 1-A, I want to waive that, just as a copy, and the same as to Exhibit No. 2.

79 Mr. MORRIS. That it is not the best evidence, because it is a copy?

Mr. WILSON. I don't want to waive anything else except the fact that you have not produced the original.

Mr. MORRIS. That, you do waive?

Mr. WILSON. Yes, I do waive that.

The COURT. The objection will be overruled. This may all come up in the discussion.

Mr. WILSON. We may have a separate exception as to each of them?

Exhibit 1-A

I, E. M. Garnett, do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; that I will well and faithfully discharge the duties of the office of special assistant to the United States attorney, District of Utah on which I am about to enter: So help me God.

(Sign here) E. M. GARNETT.

Subscribed and sworn to before me this ——— day of ——— A. D. 192—.

Where born (State only) Virginia.

Date of birth, January 10, 1877.

Whence appointed: State, Utah; County, Salt Lake; Congressional District, 2nd.

[SEAL.]

Notary Public.

Date of entry upon duty ———.

Residence, Salt Lake City.

80

Exhibit 2

OCTOBER 21, 4.

THE ATTORNEY GENERAL,
Washington, D. C.

SIR: Referring to your letter of October 18th, 36-77-3-8, I enclose herewith oath duly executed as special assistant to the United States attorney, District of Utah, to assist in the trial of two mail fraud cases, namely, the Great Western Coal Mines Company, and the Consolidated Mascot Mines Corporation.

Respectfully,

E. M. GARNETT.

Mr. MORRIS. We rest.

Mr. WILSON. I would like as ask Mr. Garnett one further question, if I might, your honor.

Q. You say, Mr. Garnett, that you, according to your recollection, from time to time during the taking of this testimony before

the grand jury and the grand inquest which resulted in this indictment, transcribed portions of the testimony and furnished it to the district attorney?

A. That is my recollection: yes, sir.

Q. Did you at any time see any portions of that testimony being used before the grand jury after you had furnished it to him?

A. I have no recollection of such.

Q. Have you any recollection of handing any portion of the transcript to the grand jury, or any member thereof?

A. I have a recollection that I did not.

Q. Positive that you did not?

A. I am.

Q. Did you read any of the transcript or any of the stenographic notes to the grand jury during its session?

A. Not other than possibly a question being re-read, or an answer.

Q. You did that, from time to time, as requested?

81 A. If requested; yes.

Q. And you were requested?

A. I could not state definitely.

Q. Your best recollection is that you were on several occasions during the hearing so requested?

A. That is my best recollection.

Mr. WILSON. That is all. We rest now.

Mr. MORRIS. We rest.

EDWARD M. GARNETT was thereupon recalled as a witness and testified as follows:

Mr. MORRIS. Before proceeding with the argument, I would like to ask Mr. Garnett whether or not he has, during the recess of court since yesterday, ascertained the precise time the grand jury was in session for the consideration of the case which the indictment at bar was returned?

A. I have.

Q. State, will you please, Mr. Garnett, when that proceeding began before the grand jury.

A. On October 23rd.

Q. And what days did it continue?

A. October 23, 24, 27, 28, 29, and 30.

Q. During all of which days testimony was offered and received by the grand jury?

A. Yes.

Q. That makes six days in all?

A. Yes.

Mr. WILSON:

Q. Upon the dates omitted, those dates omitted no testimony was taken?

A. No testimony was taken on those dates, the dates being Saturday and Sunday, October 25 and 26.

Mr. WILSON. This testimony, of course, becomes a part of the testimony offered pursuant to our understanding?

Mr. MORRIS. Yes. Mr. Garnett was requested to verify these dates in order to make the record complete.

82 Mr. WILSON. Yes; that was the understanding.

The COURT. Q. Mr. Garnett, how are these special attorneys paid?

A. The attorney general fixes their compensation in his discretion.

Q. In this particular case your compensation was fixed how, as a stenographer or as an attorney?

A. It was fixed at \$10.00 per day and forty-five cents a page for transcript.

Now, in furtherance of justice and that right may be done, the plaintiff herein presents the foregoing as its bill of exceptions in the above-entitled cause and prays that the same may be settled, allowed, signed, and certified by the court and made a part of the record in said cause as provided by law.

CHAS. M. MORRIS,
United States Attorney,
EDWARD M. MORRISSEY,
Assistant United States Attorney,
J. K. SMITH,
Assistant United States Attorney,
Attorneys for Plaintiff.

The foregoing bill of exceptions may be settled, allowed, signed, and certified by the court as a bill of exceptions in the above-entitled cause.

JACOB EVANS,
Attorney for George A. Storrs.
M. E. WILSON,
DAN B. SHIELDS,
Attorneys for Joseph S. Welch, Earl J. Welch,
and Charles M. Croft.

83 In United States District Court

Order settling bill of exceptions

The foregoing bill of exceptions contains all the evidence offered upon the hearing of the above entitled cause, together with correct copies of the exhibits offered and received at said hearing, and said bill of exceptions is correct in all respects and is hereby approved, allowed, settled and made a part of the record herein.

Dated this 23rd day of April, 1925.

TILLMAN D. JOHNSON,

Judge of the United States Court for the District of Utah.

[File endorsement omitted.]

In United States District Court

Petition for writ of error

Filed Apr. 23, 1925

84 And now comes the United States of America, plaintiff herein, and says:

That on the sixth day of March, in the year of our Lord nineteen hundred twenty-five, during the November, A. D. 1925, term of said court, the above mentioned District Court entered a judgment herein in favor of the defendants and against this plaintiff, in which judgment the said court sustained the pleas in abatement to the indictment in said cause, and thereafter, to-wit, on the eighth day of April, in the year of our Lord nineteen hundred twenty-five, during the said November, A. D. 1925, term of said court, the above-mentioned District Court entered a judgment herein in favor of the defendants and against this plaintiff, in which judgment the said court denied the petition of the plaintiff for a rehearing of the matters heretofore submitted to said court upon the said pleas in abatement filed by the said defendants and each of them to plaintiff's indictment in the above entitled cause and the demurrers of plaintiff interposed to said pleas in abatement, and in which said

85 judgments and the proceedings had prior thereto in said cause, certain errors were committed to the prejudice of this plaintiff, all of which will more fully appear from the assignment of errors which is filed with this petition.

Wherefore, this plaintiff prays that a writ of error may issue in this behalf out of the Supreme Court of the United States for the correction of errors so complained of, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

CHAS. M. MORRIS,

United States Attorney for the District of Utah,

EDWARD M. MORRISSEY,

Assistant United States Attorney for the District of Utah,

J. K. SMITH,

Assistant United States Attorney for the District of Utah,

Attorneys for Plaintiff.

Allowed, April 23, 1925.

TILLMAN D. JOHNSON,

*Judge of the District Court of the United States
for the District of Utah.*

Copy of the foregoing petition received this 23 day of April,
A. D. 1925.

JACOB EVANS,

Attorney for George A. Storrs.

Copy of the foregoing petition received this 23 day of April,
A. D. 1925.

M. E. WILSON,
DAN B. SHIELDS,
*Attorneys for Joseph S. Welch, Earl J. Welch,
and Charles M. Croft.*

86

In United States District Court

Assignments of error

Filed Apr. 23, 1925

The plaintiff in the above-entitled cause, in connection with the petition for a writ of error, makes the following assignment of errors, which the plaintiff avers exists, to wit:

1. That the court erred in denying plaintiff's petition for a rehearing of the matters submitted to the court upon the pleas in abatement filed by the defendants to plaintiff's indictment in said cause.

2. That the court erred in overruling the demurers interposed by plaintiff to the pleas in abatement filed in said cause by the defendants to plaintiff's indictment.

3. That the court erred in sustaining the pleas in abatement filed by the defendants to plaintiff's indictment in said cause.

4. That the court erred in entering judgment in favor of the defendants and each of them and against the plaintiff in the above-entitled cause.

87 Wherefore, plaintiff prays that the judgment of said District Court be reversed and that the pleas in abatement filed by the defendants and each of them be held for naught, and that the defendants and each of them be required to answer to the indictment on file in the above-entitled cause.

CHAS. M. MORRIS,
United States Attorney for the District of Utah,
EDWARD M. MORRISSEY,
Assistant United States Attorney for the District of Utah,
J. K. SMITH,
Assistant United States Attorney for the District of Utah,
Attorneys for Plaintiff.

Copy of the foregoing assignment of errors received this 23 day of April, 1925.

M. E. WILSON,
DAN B. SHIELDS,
Attorneys for Jos. S. Welch, E. J. Welch, and Chas. M. Croft.

Copy of the foregoing assignment of errors received this 23 day of April, 1925.

JACOB EVANS,
Attorney for George A. Storrs.

In United States District Court

[Title omitted.]

Order allowing writ of error

Filed Apr. 23, 1925

This 23 day of April, in the year of our Lord nineteen hundred twenty-five, comes the plaintiff and files herein and presents to the court, through its attorneys, plaintiff's petition praying for the allowance of a writ of error, and an assignment of errors intended to be urged by plaintiff, and praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States and that such other and further proceedings may be had as are proper in the premises.

On consideration whereof, the court does allow the writ of error; but plaintiff according to law is relieved from giving bond.

Done this 23 day of April, A. D. 1925.

TILLMAN D. JOHNSON,

*Judge of the District Court of the United States
for the District of Utah.*

[File endorsement omitted.]

In United States District Court

Praeceptum for transcript of record filed

April 23, 1925

The clerk of the above entitled court will prepare a transcript of record in the above entitled cause upon writ of error to the Supreme Court of the United States, and include therein the following:

- 1.
2. The indictment.
3. The arraignment and pleas.
4. Order to withdraw pleas of not guilty and leave granted to file pleas in abatement.
5. Pleas in abatement.
- 6.
- 7.
8. Judgment sustaining defendants' pleas in abatement.
- 9.
10. Order of court overruling defendants' objection to filing of plaintiff's petition for rehearing.
- 11.
12. Opinion of court sustaining pleas in abatement.

13. Bill of exceptions.
14. Petition for writ of error.
15. Assignment of errors.
16. Order allowing writ of error.
17. Writ of error.
18. Citation.
19. Judge's certificate.
20. Praecipe for transcript.
21. Clerk's certificate.

CHAS. M. MORRIS,

United States Attorney for the District of Utah.

EDWARD M. MORRISSEY,

Assistant United States Attorney for the District of Utah.

J. K. SMITH,

Assistant United States Attorney for the District of Utah.

Service of the within praecipe acknowledged this 23d day of April, 1925.

JACOB EVANS,

Attorney for George A. Storrs.

M. E. WILSON,

DAN B. SHIELDS,

*Attorneys for Joseph S. Welch, Earl J. Welch,
and Charles M. Croft.*

[File endorsement omitted.]

91

In United States District Court

Judge's certificate

Filed April 23, 1925

In this cause I hereby certify that I sustained the pleas in abatement filed by the defendants to the indictment herein for the reasons and upon the grounds set forth in said pleas in abatement on file herein, and that I denied the petition of plaintiff for a rehearing in said cause for the same reasons and upon the same grounds, although, by reason of said judgment, the right of the plaintiff to prosecute further the offenses charged in said indictment will be lost and plaintiff will be barred from further prosecution of the defendants for said offenses as the Statute of Limitations will be operative.

This certificate is made a part of the record and will be certified and sent up as part of the proceedings.

Dated this 23d day of April, A. D. 1925.

TILLMAN D. JOHNSON,

Judge of the United States Court for the District of Utah.

[File endorsement omitted.]

92 In United States District Court

[Title omitted.]

Writ of error and return

THE UNITED STATES OF AMERICA, ss:

The President of the United States of America, to the Judge of the District Court of the United States for the District of Utah, greeting:

Because in the record and proceedings, and also in the rendition of the judgment on a plea which is in said District Court of the United States, District of Utah, before you, between the United States of America, plaintiff, and George A. Storrs, Joseph S. Welch, Earl J. Welch, and Charles M. Croft, defendants, a manifest error has happened to the great damage of the said plaintiff, as by its complaint appears, we being willing that the error, if any has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to

93 the Supreme Court of the United States, together with this writ, so that you may have the same at the city of Washington, on or before the seventh day of May next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable William H. Taft, Chief Justice of the United States, the 23 day of April, in the year of Our Lord, one thousand, nine hundred and twenty-five.

Issued at my office in the city of Salt Lake, State of Utah, with the seal of the District Court of the United States in and for the District of Utah, and dated as aforesaid.

[SEAL.]

JOHN W. CHRISTY,
Clerk of the District Court of the United States
in and for the District of Utah.

Allowed by:

TILLMAN D. JOHNSON,
Judge, District Court of the United States
in and for the District of Utah.

UNITED STATES OF AMERICA,
District of Utah, ss:

In obedience to the command of the within writ, I herewith transmit to the United States Supreme Court, a duly certified transcript of the record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereto subscribe my name and affix the seal of the United States District Court for the District of Utah, at Salt Lake City, this 23rd day of April, 1925.

[SEAL.]

JOHN W. CHRISTY,

Clerk, United States District Court, District of Utah.

94 [Citation in usual form showing service on Jacob Evans et al. omitted in printing.]

[Clerk's certificate to foregoing transcript omitted in printing.]

[Indorsement on cover:] File No. 31,109. Utah D. C. U. S. Term No. 95. The United States of America, plaintiff in error, vs. George A. Storrs, Joseph S. Welch, et al. Filed May 1st, 1925. File No. 31,109.

○